

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GORDA DUNIGAN, as Personal Representative
for the ESTATE OF JAMES DUNIGAN, Deceased,

Plaintiff,

v

Case No. 1:16-CV-01324
Hon. Janet T. Neff
Mag. Judge Ellen S. Carmody

BRONSON METHODIST HOSPITAL,

Defendant.

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**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT PURSUANT TO FED. R. CIV. P. 56**

***** ORAL ARGUMENT REQUESTED *****

NOW COMES Plaintiff, GORDA DUNIGAN, as Personal Representative for the ESTATE OF JAMES DUNIGAN, Deceased, by and through her attorneys, and in response opposing Defendant's Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56 states as follows:

1. Plaintiff admits this paragraph.
2. Denied in the manner and form alleged. Plaintiff does not allege in her complaint that Defendant "failed to recognize" that Mr. Dunigan needed emergency

medical aid. Rather, Plaintiff's complaint alleges that Defendant evicted Mr. Dunigan *despite the fact the he was complaining of pain and was in visible agony*. Mr. Dunigan was forcibly removed from the hospital despite the fact that he was so weakened that he could not even keep himself upright, and despite the fact that he was exhibiting symptoms of congestive heart failure. Mr. Shoemaker, one of Defendant Bronson's security officers involved in the eviction, admitted in his deposition that he knows that labored "snoring respirations" that Mr. Dunigan was exhibiting indicated congestive heart failure, and that the condition is an emergency medical condition. Additionally, the video evidence shows Mr. Dunigan barely responsive, unable to walk on his own, and gasping for air. All Bronson security officers viewing his condition would know that he was in need of emergency medical aid. A reasonable juror, viewing this evidence, could conclude that the security officers had actual knowledge that Mr. Dunigan was suffering from an emergency medical condition. Thus, Plaintiff asserts that Defendant had *actual knowledge* that Mr. Dunigan was in an unstable condition and needed emergency medical aid but evicted him from the hospital anyway.

3. Admitted that Plaintiff has alleged that Mr. Dunigan was ejected from the hospital while he was in the middle of a medical emergency.

4. Plaintiff does not contest this restatement of law, but further avers that the gravamen of Plaintiff's EMTALA claim involves "failure to stabilize an emergency medical condition."

5. Plaintiff does not contest this restatement of law.

6. Denied. Bronson had a duty under EMTALA to stabilize Mr. Dunigan and provide appropriate emergent medical care. Instead, Mr. Dunigan was forcibly removed from the hospital despite the fact that his physical condition was so bad that he was unable to stand on his own feet. Mr. Dunigan's condition had deteriorated to the point that he was laying prostrate on the ground outside the hospital while Defendant's security waited for the cops to come and pick him up.

7. Denied that Defendant Bronson is entitled to summary judgment for the reasons explained in the attached brief.

8. Denied that Defendant Bronson is entitled to summary judgment for the reasons explained in the attached brief.

For all of the foregoing reasons and for the reasons explained more fully in Plaintiff's attached brief, Plaintiff respectfully requests that this Honorable Court DENY Defendant's Motion for Summary Judgment.

Respectfully submitted,

/s/James J. Harrington, IV

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Dated: May 22, 2018

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**PLAINTIFF'S BRIEF IN SUPPORT OF HER RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
PURSUANT TO FED. R. CIV. P. 56**

CONTROLLING AND MOST APPROPRIATE AUTHORITIES

Cleland v Bronson Health Care Group, Inc., 917 F.2d 266 (6th Cir. 1990)

Moses v. Providence Hosp. & Med. Centers, Inc., 561 F.3d 573, 585 (6th Cir. 2009)

Roberts ex rel. Johnson v. Galen of Virginia, Inc., 325 F.3d 776, 788 (6th Cir. 2003)

42 U.S.C.A. § 1395dd(a)

42 U.S.C.A. § 1395dd(b)

STATEMENT OF ISSUE PRESENTED

Bronson Methodist Hospital security officers forcibly ejected Mr. Dunigan off the hospital premises while he was in the middle of a medical emergency. Video surveillance footage of the incident shows that Mr. Dunigan was incoherent, unable to walk or stand on his own, and had labored “snoring respirations.” A reasonable person seeing Mr. Dunigan’s condition could conclude that he was suffering from an emergency medical condition and required emergency medical aid. However, instead of taking Mr. Dunigan to the emergency department for evaluation and treatment, the security officers called the cops and sent Mr. Dunigan away from the hospital. Tragically, Mr. Dunigan died just minutes afterwards, while he was being transported to jail.

Based on these facts, can a reasonable juror conclude that Bronson, through its agents, had actual knowledge that Mr. Dunigan had an emergency medical condition, and that the hospital failed to stabilize him before transferring him from the hospital, in violation of 42 U.S.C.A. § 1395dd(b) (EMTALA)?

Plaintiff answers: “Yes.”

Defendant answers: “No.”

I. COUNTERSTATEMENT OF MATERIAL FACTS

On May 6, 2016, at about 2:30 in the morning, James Dunigan went to Bronson Methodist Hospital complaining of chest pain and injuries suffered after falling off a bus. After being seen by the emergency department for mechanical fall injuries only, Mr. Dunigan went to the ER waiting room at around 4:30 am. Mr. Dunigan's complaints of chest pain were addressed as a part of injuries suffered in his fall.

Mr. Dunigan's complaints of chest pain were actually warning signs of impending congestive heart failure. While he was in the waiting room, Mr. Dunigan started exhibiting clear symptoms of congestive heart failure and respiratory distress. Mr. Dunigan could not ambulate on his own, and his speech was impaired. At around 6:10 am, Bronson security officer Charles Shoemaker, Art Carlisle and Zach Rickli approached Mr. Dunigan and asked him to leave the hospital. At this point, Mr. Dunigan's medical condition had deteriorated to the point that he could not follow commands to walk or hold himself upright, and it was clear that he needed emergency medical aid. Instead of being directed back to get looked at, the three Bronson security officers, (Carlisle, Rickli, Shoemaker) ejected Mr. Dunigan from the hospital. These events are shown on the Hospital Surveillance footage, attached as Exhibit 1 to this response and to be filed with the Court in the traditional manner.¹ When the cops were

¹ There are two discs attached, one with an execution file containing proprietary software and the other with the actual video footage. In order to play the videos, the proprietary software must first be installed on a computer. After the software is installed, the videos on the second CD can be viewed.

called, Mr. Dunigan was so unstable that he was unable to stand upright on his own and was barely conscious.

The hospital surveillance videos show that Defendant Bronson, through its security officers, had actual knowledge that Mr. Dunigan was in a deteriorating and unstable medical condition when he was forcibly ejected from the hospital.

The “Waiting Room 5” video shows Mr. Dunigan in the waiting room of the hospital. He is lying in a chair and is unresponsive for the most part. At 6:11, a security officer (identified as Charles Shoemaker) approaches Mr. Dunigan and speaks with him. A few minutes later, at 6:16, Mr. Shoemaker comes back with two others (Carlisle, and Rickli). At this point, the officers try to get Mr. Dunigan to get up, but Mr. Dunigan is unable to stay standing. The officers bring over a wheelchair, and after a few minutes, are able to place Mr. Dunigan in it. It is clear from watching the video that Mr. Dunigan is barely responsive and presents almost a “dead weight” during the process. Despite this, defendant’s security officers wheel him out of the hospital instead of taking Mr. Dunigan into the ER and getting Mr. Dunigan emergency medical care.

The “North Pavilion PTZ” video shows Defendant’s security officers taking Mr. Dunigan outside to wait for the police. Starting at 6:34 on the video, the security officers remove Mr. Dunigan from the wheelchair he was brought outside in. Mr. Dunigan is so weak and disoriented that he is unable to remain standing. The security officers try to get Mr. Dunigan to stand, but once again he cannot not stay upright and can be seen in the video footage crumbling to the ground. The officers lay him down prostrate on the ground, where he remains until the cops come at 6:42.

Eventually, the Kalamazoo Public Safety officers arrived at the hospital. Mr. Dunigan was then physically lifted and placed in the police vehicle in order to be taken to jail. The video from the police vehicle is attached as Exhibit 2, also filed in the traditional manner. This video is significant because it also has audio, and the viewer can both see and *hear* Mr. Dunigan's labored breathing and gasps, concrete evidence that Mr. Dunigan was in the middle of a medical emergency and needed to be taken into the emergency room, not forcibly ejected from the hospital.

Bronson Security Officer Charles Shoemaker was one of the security officers involved in ejecting Mr. Dunigan from the hospital. (Exhibit 3, Deposition of Charles Shoemaker, p. 25) In addition to being a security officer, Mr. Shoemaker is a trained Emergency Medical Technician (EMT). (Id. at 7) As a part of his duties as an EMT, Mr. Shoemaker had training in patient care, including assessing a patient's emergency medical situation and providing EMT care. (Id. at 9) These duties would include assessing a patient's vitals and stabilizing a patient. (Id.)

Mr. Shoemaker, as a part of his training at Bronson, received training regarding patient-rights, with an emphasis on a patient's "right to be seen." (Id. at 20-21) Mr. Shoemaker understood that the "right to be seen" was the patient's right to have medical treatment provided, to not be turned away from the hospital in the face of an obvious emergent medical need. (Id.) Mr. Shoemaker knew that if he observed someone who looked like they were in need of medical attention, the appropriate course of action was to get the person seen for treatment. (Id. at 21)

In fact, Mr. Shoemaker testified that he has previously helped a patient get medical treatment, and he would have done so even if the patient did not (and perhaps could not) verbally ask “to be seen.” (Id. at 21-22) At the time, Mr. Shoemaker saw an individual outside on the garden level of the hospital by a ramp. The individual was reported to be homeless and Mr. Shoemaker observed that the individual was “unsteady” and his speech was impaired. (Id. at 22) In response, Mr. Shoemaker procured a wheelchair and assisted that individual to get medical attention. Mr. Shoemaker reiterated that he would have gotten the individual medical treatment, whether he asked for it or not, and regardless of whether the individual had been previously discharged by the hospital. (Id. at 24)

On May 6, 2016, Mr. Shoemaker was involved with ejecting Mr. Dunigan from the hospital. When he first met Mr. Dunigan in the waiting room, Mr. Shoemaker described Mr. Dunigan as “mumbling at lot” and “incoherent.” (Id. at 29) Mr. Shoemaker further testified that Mr. Dunigan was breathing fine during the time that he interacted with him; Mr. Dunigan was not exhibiting the loud “snoring respirations” that he was while being transported to the jail (as depicted in the police video). (Id. at 32-33) Mr. Shoemaker admitted that if he had heard the “snoring respirations,” he would have been concerned. (Id. at 33) He explained that such respirations would be indicative of respiratory failure, and “it would obviously cause some concern as far as congestive heart failure.” (Id. at 34)

Mr. Shoemaker is aware of the signs of congestive heart failure due to his training as an EMT. (Id.) Mr. Shoemaker further admitted that if Mr. Dunigan’s

breathing changed from normal to snoring respirations during the time that Mr. Dunigan was outside and being transferred into the police vehicle, the change in breathing would be significant and would require emergency intervention. (Id. at 35) Mr. Shoemaker testified that if he saw the change in breathing, he hypothetically would have gotten Mr. Dunigan medical aid. (Id.)

The video evidence establishes that Mr. Dunigan's breathing *was labored while he was still outside the hospital* and being loaded into the police vehicle; Mr. Shoemaker (despite his contradictory deposition testimony) heard the "snoring respirations," yet did nothing to get Mr. Dunigan any aid. Plaintiff's counsel played the relevant video footage during Mr. Shoemaker's deposition. After viewing/hearing the video, Mr. Shoemaker acknowledged that Mr. Dunigan was making the "snoring respirations" – that Mr. Shoemaker earlier admitted he knew indicated congestive heart failure and respiratory failure – while Dunigan was outside of the police vehicle and in Mr. Shoemaker's vicinity. (Id. at 43-44; 49-50) Art Carlisle, one of the other Bronson Security Officers involved, was standing right next to Mr. Dunigan's head while they were loading him into the police vehicle. (Id. at 49-50) Given his location, Mr. Carlisle would certainly have heard Mr. Dunigan's labored "snoring respirations." Despite this, none of the Bronson officers got Mr. Dunigan any medical aid.

Mr. Shoemaker consistently disregarded Mr. Dunigan's complaints, and even gave misinformation to the Kalamazoo Public Safety officers who responded. Mr. Dunigan told Mr. Shoemaker that "my legs ain't ready," and Mr. Shoemaker responded with "Bull!@#\$. " (Id. at 48) Mr. Shoemaker also told the officers that Mr. Dunigan had

been “up walking around;” however, Mr. Shoemaker never actually witnessed Mr. Dunigan walking around and had no firsthand knowledge of the fact. (Id. at 51-52) In fact, Mr. Shoemaker’s comments that morning disregarded Mr. Dunigan’s physical state, were dismissive and unprofessional. On the video, Mr. Shoemaker can be heard stating “Act like a grown-ass man. F&*%ing stupid,” and making jokes about dumping Mr. Dunigan out of his wheelchair. (Id. at 53-54)

There is absolutely no doubt, and Plaintiff does have expert support, that Mr. Dunigan’s death could have and should have been prevented.² Mr. Dunigan died from congestive heart failure.³ He had every single classic sign and symptom of congestive heart failure at the time the Bronson security officers became involved with Mr. Dunigan. Those signs and symptoms included difficulty breathing, shortness of breath, unresponsiveness, audible congestion and most important, foaming at the mouth.⁴ Simply put, he was in respiratory distress. In the autopsy report, the pathologist also noted parenchyma (lung tissue), which was congested and emphysematous (a marked abnormal increase in the size of the airspace resulting in labored breathing and increased susceptibility to infection). There is no doubt that Mr. Dunigan was suffering from congestive heart failure.

All the hospital security officers needed to do in order to save his life was to get Mr. Dunigan medical attention. Instead of getting Mr. Dunigan medical aid at the

² Exhibit 4, Deposition of Dr. Robert Stark, p. 71; Exhibit 5, Deposition of Dr. Charles Landers, p. 112-113; Exhibit 6, Deposition of Dr. Saul Levine, p. 114.

³ Exhibit 7, Autopsy Report; Exhibit 8, Deposition of Dr. Werner Spitz, p. 27, 102.

⁴ Exhibit 8, Deposition of Dr. Werner Spitz, p. 27.

hospital, Mr. Shoemaker (along with the other Bronson security officers), helped load Mr. Dunigan into the police cruiser and sent him to his death.

Plaintiff initially filed a single count complaint against Bronson alleging a claim under 42 U.S.C. §1395dd, the Emergency Medical Treatment and Active Labor Act (EMTALA) for failing to stabilize Mr. Dunigan and instead dumping him out of the hospital to his death. On June 23, 2017, Plaintiff filed a First Amended Complaint, supplementing the factual background in the complaint to reflect facts learned from the surveillance videos. (Docket No. 25)

This case was consolidated with *Estate of Dunigan v. Nugent et al*, 1:16-cv-01325 for purposes of discovery. In that case, Plaintiff alleged claims of deliberate indifference to a serious medical need in violation of Mr. Dunigan's Fourteenth Amendment constitutional rights, actionable under 42 U.S.C. §1983, against the Kalamazoo Safety Officers. That case has now been resolved.

On April 24, 2018 Defendant Bronson filed a Rule 56 motion for summary judgment of Plaintiff's EMTALA claim against Defendant Bronson.⁵ Bronson's motion

⁵ On May 21, 2018, Plaintiff filed a motion for leave to amend her complaint and administratively stay this case pending expiration of the mandatory notice waiting period for filing medical malpractice cases under M.C.L. 600.2912b. Plaintiff intends to file medical malpractice suits against Bronson and its actual and ostensible agents for the medical care provided to Mr. Dunigan. Plaintiff has asked that the Court grant her motion to amend so that the medical malpractice claims can be litigated in the same case as the EMTALA claim. Alternatively, Plaintiff has requested that the Court allow her to dismiss the EMTALA claim without prejudice, again so that all the claims can be litigated in the same suit. Defendant has not responded to Plaintiff's motion to amend as of the filing of this response.

should be denied because, when the video evidence and testimony is viewed in a light most favorable to Plaintiff, Plaintiff has a valid EMTALA claim for failure to stabilize.

II. COUNTERSTATEMENT OF STANDARD OF REVIEW

Summary judgment is appropriate only in those cases where the pleadings, affidavits, and responses to discovery “show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 447 U.S. 317, 323 (1986). In determining whether there is a genuine issue of material fact, the record is viewed in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). Under Fed. R. Civ. P. 56(c), the moving party has the burden of establishing that there are no genuine issues of material fact and that he is entitled to a judgment as a matter of law. *Darrah v. City of Oak Park*, 255 F.3d 301 (6th Cir. 2001).

A material fact is “one that might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248. A disputed fact presents a genuine issue “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* Credibility determinations, the weighting of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of the judge. *Anderson*, 477 U.S. at 255. “The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn” in the nonmovant’s favor. *Id.*

Despite filing its motion pursuant to Fed. R. Civ. P. 56, Defendant Bronson’s argument does not really question the factual support for Plaintiff’s claim (although its

recitation of facts are not in a “light most favorable” to plaintiff, as required under that rule). Instead, Bronson’s argument focuses on the legal sufficiency of Plaintiff’s claims under EMTALA. Defendant ignores Plaintiff’s allegations against the Bronson Security Officers, and does not provide any meaningful analysis as to whether the officers’ conduct was in violation of EMTALA. Instead, Bronson keeps its argument focused on the medical providers’ conduct only.

When the entire record, and the full scope of Plaintiff’s allegations against Bronson (especially its Security officers) is viewed in a light most favorable to Plaintiff, it is clear that Plaintiff has valid claims against Defendant Bronson for violation of EMTALA for failure to stabilize Mr. Dunigan before forcibly ejecting him from the hospital premises.

III. LAW AND ARGUMENT

A. Plaintiff has stated a cause of action for violation of EMTALA.

Defendant spends the bulk of its brief characterizing Plaintiff’s claim as an “improper motive”/medical screening case and asserts that, under the standard applied by the Sixth Circuit in *Cleland v Bronson Health Care Group, Inc.*, 917 F.2d 266 (6th Cir. 1990), Plaintiff cannot establish an EMTALA claim as a matter of law. However, Plaintiff’s claim as pleaded is for “failure to stabilize an emergency medical condition” before transfer claim. Under this theory of liability, Plaintiff clearly states a claim for relief under 42 U.S.C. § 1395dd with sufficient evidentiary support to survive summary judgment.

i. The Statute, its Purpose and its History

Congress passed the EMTALA as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, Pub. L. No. 99-272 § 1921, 100 Stat. 82, 164-67 (42 U.S.C. § 1395 dd). To be successful in a claim under the EMTALA, a plaintiff must show that he “was suffering from an ‘emergency medical condition’ and that the defendant transferred (him) before it had ‘stabilized’ (him) within the meaning of the act.” *Thornton v. Southwest Detroit Hospital*, 895 F.2d 1131, 1133 (6th Cir. 1990). Liability under an EMTALA claim is not based on fault but rather on satisfying these two elements. *Cooper v. Gulf Breeze Hospital, Inc.*, 839 F.Supp. 1539, 1542 (N.D. Fla 1993). Courts universally hold that a cause of action under the Act is not analogous to a state medical malpractice claim because it creates liability for the failure or refusal to treat so as to stabilize someone who is suffering an emergency medical condition. *Cleland v. Bronson Health Care Group*, 917 F.2d 266, 268 (6th Cir. 1990); *Summers v. Baptist Medical Center Arkadelphia*, 91 F3d 1132, 1137 (8th Cir. 1996).

Through the EMTALA, Congress imposes two duties on hospitals that have entered into Medicare provider agreements. The first relates to the hospital’s duty to screen, meaning evaluate, all persons in the same manner so as to determine if he or she has an emergency medical condition. 42 U.S.C.A. § 1395dd(a). The second duty arises when, as in the instant case, an emergency medical condition is identified. See 42 U.S.C.A. § 1395dd(b). The treatment necessary to stabilize a person is that treatment necessary to assure within reasonable medical probability, that no material

deterioration of the condition is likely to result from or occur during the transfer from the facility. 42 U.S.C.A. § 1395dd (e)(3)(A).

The relevant statutory provisions state:

§ 1395dd. Examination and treatment for emergency medical conditions and women in labor

(a) Medical screening requirement. In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this title [42 USCS §§ 1395 et seq.]) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1)) exists.

(b) Necessary stabilizing treatment for emergency medical conditions and labor.

(1) In general. If any individual (whether or not eligible for benefits under this title [42 USCS §§ 1395 et seq.]) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either --

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c).

(c) Restricting transfers until individual stabilized.

(1) Rule. If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(3)(B)), the hospital may not transfer the individual ...

(2) Appropriate transfer. An appropriate transfer to a medical facility is a transfer --

(A) in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health

...

(e) Definitions. In this section:

(1) The term "emergency medical condition" means --

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in --

(i) placing the health of the individual[] in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part;

...

(3)

(A) The term "to stabilize" means, with respect to an emergency medical condition described in paragraph (1)(a), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result or occur during from the transfer of the individual from a facility,...

(B) The term "stabilized" means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility,...

(4) The term "transfer" means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed

by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (A) has been declared dead, or (B) leaves the facility without the permission of any such person.

ii. Plaintiff has a “failure to stabilize” EMTALA claim against Bronson.

Read as a whole, the gravamen of Plaintiff’s EMTALA claim deals with Bronson’s failure to stabilize Mr. Dunigan before forcibly ejecting him from the hospital. Mr. Dunigan went into congestive heart failure while he was in the hospital. Bronson’s security officers knew he was suffering from an “emergency medical condition” (i.e. congestive heart failure), but instead of making sure that Mr. Dunigan received medical care and was “stabilized,” the officers instead forcibly ejected Mr. Dunigan, straight to his death. It is tragic that Mr. Dunigan passed away in the back of a police vehicle just minutes after leaving the hospital, when he could very easily have been given life-saving treatment at Bronson. This case is a quintessential “failure to stabilize” EMTALA case.

First, it is undisputed that Mr. Dunigan was suffering from an “emergency medical condition.” An “emergency medical condition” is defined in relevant part under the statute as “a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in--(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, (ii) serious impairment to bodily functions, or (iii) serious dysfunction of any bodily organ or part” 42 U.S.C. § 1395dd(e)(1)(A).

Congestive heart failure meets this definition. Even if the officers could not put a name to the condition, even a lay person could see that Mr. Dunigan was in the middle of a medical collapse. The video evidence shows Mr. Dunigan unable to stand or walk on his own, stumbling over his words, and almost incoherent. A reasonable person (or hospital security officer) seeing Mr. Dunigan would know that he is suffering from an emergency medical condition that needs attention.

Second, Defendant Bronson, through its agents (security officers Shoemaker, Carlisle, and Rickli) **had actual knowledge** of Mr. Dunigan's rapidly deteriorating and unstable emergency medical condition. When the facts are viewed in a light most favorable to Plaintiff, a reasonable juror can conclude that Defendant Bronson *knew* that Mr. Dunigan was suffering from a serious emergency medical condition (i.e. congestive heart failure), was unstable, but transferred—nay, forcibly evicted—him from the hospital premises anyway. The video evidence in this case, on its own, is enough to create a jury submissible issue regarding whether the Bronson security officers had actual knowledge that Mr. Dunigan was suffering from an emergency medical condition. There is a genuine issue of material fact regarding the “actual knowledge” element of Plaintiff's EMTALA claim based solely on the video evidence, and summary judgment must be denied.

In addition to the video footage, which gives a bird's eye view of what happened, Mr. Shoemaker (one of the security officers involved) admitted that he knew the signs for congestive heart failure, and that Mr. Dunigan was exhibiting the signs of

congestive heart failure. Despite this, Mr. Shoemaker participated in ejecting Mr. Dunigan from the premises.

Mr. Shoemaker testified that he has training as an EMT, and that he knew the signs of congestive heart failure, which include loud respirations and difficulty breathing. (Exhibit 3, Deposition of Charles Shoemaker, p. 33-34) He testified that such respirations would be indicative of respiratory failure, and “it would obviously cause some concern as far as congestive heart failure.” (Id. at 34) If he saw someone exhibiting signs of congestive heart failure, Mr., Shoemaker conceded that the appropriate course of action would be to get that person medical treatment.

To escape culpability, Mr. Shoemaker self-servingly testified that he did not hear Mr. Dunigan’s labored “snoring respirations”; however, this testimony can be disregarded by the jury, especially in light of the video/audio footage depicting Mr. Dunigan’s collapse and labored breaths as he was being loaded into the police vehicle. Mr. Shoemaker (and the other two security officers) were right there, and a jury can conclude that they did, in fact, hear Mr. Dunigan’s breathing. As a result, a jury can conclude that Mr. Shoemaker—and, by extension, Defendant Bronson—knew about Mr. Dunigan’s serious emergency medical condition, but transferred him out of the hospital anyway.

Defendant implies that knowledge by a doctor or other medical provider is necessary to trigger the duty to stabilize an emergency medical condition under EMTALA. (Although Bronson does not directly make this argument, its sole analysis focuses on what the doctors/nurses knew, and ignores the culpability of the security

officers, who were a) agents of the hospital and b) the individuals who forcibly ejected Mr. Dunigan off the premises.) The Sixth Circuit has rejected this analysis, and held instead that “The language of EMTALA clearly implies that [the hospital] is responsible not only for the actions of its doctors, but also for the actions of its other employees. The EMTALA statute, in all its sections, refers to the obligations of hospitals, rather than physicians.” *Roberts ex rel. Johnson v. Galen of Virginia, Inc.*, 325 F.3d 776, 788 (6th Cir. 2003). Thus, “while actual knowledge is required, any hospital employee or agent that has knowledge of a patient's emergency medical condition might potentially subject the hospital to liability under EMTALA.” *Moses v. Providence Hosp. & Med. Centers, Inc.*, 561 F.3d 573, 585 (6th Cir. 2009) (quoting *Roberts*).

Defendant Bronson also implies in its motion that its duty “to stabilize an emergency medical condition” was extinguished after Mr. Dunigan was evaluated by the emergency department doctor and cleared to be discharged. This argument, however, disregards the plain language of the statute. 42 U.S.C. § 1395dd(e)(4) provides in relevant part: “The term ‘transfer’ means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital.” Thus, while a discharge *can* be one form of transfer, it is not the only form. In order for there to be a “transfer” under the statute, there only needs to be “movement of an individual outside a hospital” “at the direction of any person employed by the hospital.” The Bronson security officers’ forcible eviction of Mr. Dunigan from the premises qualifies as a “transfer” under EMTALA.

The fact that Mr. Dunigan was previously seen by the emergency department and discharged is irrelevant to the analysis under EMTALA. For a “failure to stabilize” claim, the only relevant inquiries are whether 1) the hospital (through its agents) had “actual knowledge” of an “emergency medical condition,” and 2) despite this knowledge, the hospital “transferred” the patient before the emergency medical condition was stabilized. In this case, Bronson had “actual knowledge” of Mr. Dunigan’s onset of congestive heart failure through Mr. Shoemaker and the other security officers. Mr. Shoemaker admitted that he knew the signs of congestive heart failure, that it was an emergency medical condition that would require aid, and admitted that Mr. Dunigan was exhibiting those signs. A reasonable juror could evaluate this testimony, and the video evidence, and conclude that the security officers (especially Mr. Shoemaker) had actual knowledge that Mr. Dunigan was suffering from congestive heart failure. As a result, summary judgment of Plaintiff’s EMTALA claim is not warranted.

Last, Defendant implies in its motion that, because Mr. Dunigan was incoherent and impaired by the time the security officers were interacting with him, he did not affirmatively “request” medical treatment, and thus Bronson’s lack of response to Mr. Dunigan did not trigger EMTALA. This argument ignores the plain language of the statute. 42 U.S.C. § 1395dd(b)(1) provides in relevant part that “If any individual comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide” responsive medical treatment.

There is nothing in this subsection that requires an incapacitated person to affirmatively “request” medical care at a hospital to trigger a hospital’s duties under EMTALA. Rather, the statute only requires that “an individual come to the hospital” and that the “hospital determines that the individual has an emergency medical condition.” In this case, both of these elements are met. Mr. Dunigan was *at* the hospital, so he obviously came there. The statute does not specify reasons for being at the hospital, only presence. Bronson—through its agents—determined that Mr. Dunigan was suffering from a suspected emergency medical condition, congestive heart failure. As a result, both elements for a claim under the “failure to stabilize” EMTALA claim are met. Defendant Bronson’s motion for summary judgment must be denied.

IV. CONCLUSION

What happened to Mr. Dunigan is abominable. Any one of the many employees who observed Mr. Dunigan during his time in the waiting room would have seen that he was barely conscious and in visible pain. When Defendant’s security officers came to talk to Mr. Dunigan, they saw that he was in an unstable and deteriorating condition that needed emergency medical condition. Mr. Shoemaker even admitted that Mr. Dunigan was exhibiting signs of congestive heart failure, an undisputed emergency medical condition.

Mr. Dunigan was barely conscious and so weak that he was unable to stand on his feet. There is no question that Mr. Dunigan was suffering from serious impairments to his body functions, namely walking and being conscious. The impairments were

visible to everyone and Defendant had a duty to stabilize Mr. Dunigan before transferring him from the premises. Instead of wheeling Mr. Dunigan to get medical attention, Defendant instead called the cops on him. Defendant's security took him outside and laid him down on the grass, dumping all responsibility for him. EMTALA was enacted by congress to prevent exactly the type of "dumping" that Mr. Dunigan was subjected to.

For all of the foregoing reasons and for the reasons, Plaintiff respectfully requests that this Honorable Court DENY Defendant's Motion for Summary Judgment.

Respectfully submitted,

/s/James J. Harrington, IV

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Dated: May 22, 2018

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GORDA DUNIGAN, as Personal Representative
for the ESTATE OF JAMES DUNIGAN, Deceased,

Plaintiff,

v

Case No. 1:16-CV-01324
Hon. Janet T. Neff
Mag. Judge Ellen S. Carmody

BRONSON METHODIST HOSPITAL,

Defendant.

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PLAINTIFF'S EXHIBIT LIST

Exhibit 1 Hospital Surveillance videos, along with execution file with proprietary software (filed with the Court in traditional manner)

There are two discs attached as a part of this exhibit, one with an execution file containing proprietary software and the other with the actual video footage. In order to play the videos, the proprietary software must first be installed on a computer. After the software is installed, the videos on the second disk can be viewed.

Exhibit 2 Police Cruiser video (filed with the Court in traditional manner)

Exhibit 3 Deposition of Charles Shoemaker

Exhibit 4 Deposition of Dr. Robert Stark

Exhibit 5 Deposition of Dr. Charles Landers

- Exhibit 6 Deposition of Dr. Saul Levine
- Exhibit 7 Autopsy Report
- Exhibit 8 Deposition of Dr. Werner Spitz

Exhibit 1

Hospital Surveillance videos, along with execution
file with proprietary software

(filed with the Court in traditional manner)

There are two discs attached as a part of this exhibit, one with an execution file containing proprietary software and the other with the actual video footage. In order to play the videos, the proprietary software must first be installed on a computer. After the software is installed, the videos on the second disk can be viewed.

Exhibit 2

Police Cruiser video

(filed with the Court in traditional manner)

Exhibit 3

In The Matter Of:
Dunigan vs.
Bronson Methodist Hospital

Charles Shoemaker
June 2, 2017



Bingham Farms/Southfield • Grand Rapids
Detroit • Ann Arbor • Flint • Lansing • Jackson • Mt. Clemens • Saginaw • Troy

Original File SHOEMAKER_CHARLES.txt
Min-U-Script® with Word Index

<p style="text-align: right;">Page 1</p> <p>1 IN THE DISTRICT COURT OF THE UNITED STATES</p> <p>2 FOR THE WESTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 GORDA DUNIGAN, as Personal</p> <p>6 Representative for the Estate</p> <p>7 of JAMES DUNIGAN, Deceased,</p> <p>8 Plaintiff,</p> <p>9 vs. Case No. 1:16-CV-01324</p> <p>10 Hon. Janet T. Neff</p> <p>11 Mag. Judge Ellen S. Carmody</p> <p>12 BRONSON METHODIST HOSPITAL,</p> <p>13 Defendant.</p> <p>14 _____</p> <p>15</p> <p>16</p> <p>17 The Deposition of CHARLES SHOEMAKER,</p> <p>18 Taken at 250 East Lovell Street, Suite 355,</p> <p>19 Kalamazoo, Michigan,</p> <p>20 Commencing at 2:36 p.m.,</p> <p>21 Friday, June 2, 2017,</p> <p>22 Before Rebecca L. Russo, CSR-2759, RMR, CRR.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 CHARLES SHOEMAKER</p> <p>5</p> <p>6 EXAMINATION BY MR. HARRINGTON 4</p> <p>7</p> <p>8 EXHIBITS</p> <p>9</p> <p>10 EXHIBIT PAGE</p> <p>11 (Exhibits not offered.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 JAMES J. HARRINGTON, IV</p> <p>4 Fieger Fieger Kenney & Harrington PC</p> <p>5 19390 West Ten Mile Road</p> <p>6 Southfield, Michigan 48075</p> <p>7 248.355.5555</p> <p>8 j.harrington@fiegerlaw.com</p> <p>9 Appearing on behalf of the Plaintiff.</p> <p>10</p> <p>11 JOHN C. O'LOUGHLIN</p> <p>12 Smith Haughey Rice & Roegge PC</p> <p>13 100 Monroe Center Street, N.W.</p> <p>14 Grand Rapids, Michigan 49503</p> <p>15 616.774.8000</p> <p>16 joloughlin@shrr.com</p> <p>17 Appearing on behalf of the Defendant.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 Kalamazoo, Michigan</p> <p>2 Friday, June 2, 2017</p> <p>3 2:36 p.m.</p> <p>4</p> <p>5</p> <p>6 CHARLES SHOEMAKER,</p> <p>7 was thereupon called as a witness herein, and after</p> <p>8 having first been duly sworn to testify to the truth,</p> <p>9 the whole truth and nothing but the truth, was</p> <p>10 examined and testified as follows:</p> <p>11 EXAMINATION</p> <p>12 BY MR. HARRINGTON:</p> <p>13 Q. State your name, for the record, please.</p> <p>14 A. Charles Robert Shoemaker.</p> <p>15 MR. HARRINGTON: Let the record reflect</p> <p>16 that this is the deposition of Charles Robert</p> <p>17 Shoemaker. It's taken pursuant to notice, agreement</p> <p>18 of counsel, to be used for all purposes contemplated</p> <p>19 under the Federal Rules of Civil Procedure.</p> <p>20 BY MR. HARRINGTON:</p> <p>21 Q. Good afternoon, sir.</p> <p>22 A. Good afternoon.</p> <p>23 Q. My name is Jim Harrington and I represent the Dunigan</p> <p>24 family. We're here for your deposition. Just a</p> <p>25 couple ground rules before we get underway. I'm going</p>

<p style="text-align: right;">Page 5</p> <p>1 to ask a series of questions and I need you to answer 2 those questions with words, okay? 3 A. Okay. 4 Q. If you don't understand something, let me know, I'll 5 rephrase it for you, okay? 6 A. Yes. 7 Q. If you do answer it, I'll assume you understood it in 8 the form and manner phrased. Fair? 9 A. That's fair. 10 Q. From time to time your attorney may object. Let him 11 get his objection out and then answer the question. 12 The only time you don't is if he instructs you not to 13 answer, okay? 14 A. Understood. 15 Q. Have you ever had a deposition before? 16 A. No. 17 Q. Have you ever testified before? 18 A. Once. 19 Q. In connection with what? 20 A. The hospital. 21 Q. With what? 22 A. A security incident. 23 Q. Were you involved? 24 A. Yes. 25 Q. In what capacity?</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Yes. 2 A. There might have been a suspension. 3 Q. Do you know, were you suspended? 4 A. Yeah, for being tardy, absences, I believe. 5 Q. Any other reasons for the suspension? 6 A. No. 7 Q. And you did not re-enroll in high school, did you? 8 A. No, I went back and received my GED back in '89. 9 Q. From? 10 A. Kalamazoo Adult Education. I couldn't tell you the 11 address. It's Westnedge Avenue, down here in 12 Kalamazoo. 13 Q. Any other additional education? 14 A. Emergency medical technician. 15 Q. I'm sorry, Morensi? 16 A. Emergency -- 17 Q. Oh, emergency. 18 A. -- medical technician. 19 Q. You're an EMT? 20 A. Yes, I have a license. 21 Q. Any others? 22 A. I have Firefighter I and II. 23 Q. What else? 24 A. That's it. 25 Q. You're a security officer?</p>
<p style="text-align: right;">Page 6</p> <p>1 A. It was as far as a security officer, a trespass 2 complaint. We had two gentlemen that were trespassing 3 into a construction zone that was fenced off and 4 marked "no trespassing." 5 Q. And those individuals were charged? 6 A. I believe they were charged with trespassing and DUI, 7 because they drove away and they were intoxicated. 8 Q. Did you ever -- in your training to be an officer, did 9 you ever take any type of courses or did they give you 10 training on how to testify? 11 A. No. 12 Q. All right. What's your date of birth? 13 A. 4-30 of 1970. 14 Q. And you're a high school grad? 15 A. No, GED. 16 Q. Your highest level of education? 17 A. Sophomore. 18 Q. And what high school? 19 A. Kalamazoo Central. 20 Q. Why did you leave Kalamazoo Central? 21 A. As far as dropping out of school? 22 Q. Yes. 23 A. Personal reasons, family issues. 24 Q. Was it any discipline in your past? 25 A. As far as from the school?</p>	<p style="text-align: right;">Page 8</p> <p>1 A. No, I was. 2 Q. Okay, you were. And what are you now? 3 A. I work down in what's called the BRIC, Bronson 4 Referral Information Center. 5 Q. Let me just -- I kind of got out of order real quick. 6 After you got your GED, did you have any 7 employment in law enforcement? 8 A. No. 9 Q. Any employment in medical? 10 A. No. 11 Q. Did you ever work as an EMT? 12 A. Yes. In the last few years I worked for South 13 County EMS. 14 Q. What years have you worked for South County EMS? 15 A. 2010, up until last year. 16 Q. When you say "last year," you mean 2016? 17 A. Yes. 18 Q. Pre or post-Dunigan incident? 19 A. It was pre. 20 Q. 2010 to 2016, do you know which month in 2016? 21 A. That I stopped working there? 22 Q. Yes. 23 A. I don't recall the exact month. I was a part-time 24 employee on-call, so I didn't work like a whole lot of 25 shifts. I just basically filled in when they needed</p>

<p style="text-align: right;">Page 9</p> <p>1 somebody.</p> <p>2 Q. Well, the Dunigan incident was early May of 2016,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. So it would have been January, February, March, or</p> <p>6 April.</p> <p>7 A. Probably March would be the last shift I worked.</p> <p>8 Q. Your job duties as an EMT include what?</p> <p>9 A. Patient care, driving the ambulance and getting the</p> <p>10 patient safely to the hospital.</p> <p>11 Q. Does part of that include assessing emergency medical</p> <p>12 situations?</p> <p>13 A. Yes.</p> <p>14 Q. And providing EMT care?</p> <p>15 A. Mmm-hmm.</p> <p>16 Q. Yes?</p> <p>17 A. Basic EMT, that's correct.</p> <p>18 Q. And what is -- what are the limitations of basic EMT</p> <p>19 care?</p> <p>20 A. It's pretty much general medical wound care, assessing</p> <p>21 the patient's vitals, splinting, stabilizing the</p> <p>22 patient, and the more advanced medical, like the</p> <p>23 medications, more advanced airway, would be performed</p> <p>24 by the paramedic that I worked with. I could do basic</p> <p>25 airway.</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. -- everything word for word. And the other thing is,</p> <p>2 is just one person at a time talk, is that okay?</p> <p>3 A. Yes.</p> <p>4 Q. Thank you. Hired in as a security officer in</p> <p>5 February '99?</p> <p>6 A. Correct.</p> <p>7 Q. And how long were you a security officer?</p> <p>8 A. Until about 2003, and then I went down to the BRIC.</p> <p>9 Q. What does that mean?</p> <p>10 A. Bronson Referral Information Center.</p> <p>11 Q. Bronson Referral --</p> <p>12 A. Referral Information Center.</p> <p>13 Q. So from '03 to when did you do BRIC?</p> <p>14 A. Until about January of 2016, and then from</p> <p>15 January 2016 until October, I worked security. And</p> <p>16 then I went back down to the BRIC when a shift opened</p> <p>17 up that I wanted.</p> <p>18 Q. Do you like working in the BRIC?</p> <p>19 A. Yes.</p> <p>20 Q. More than security?</p> <p>21 A. Yes.</p> <p>22 Q. Why?</p> <p>23 A. Hours is the big one, 12-hour shifts.</p> <p>24 Q. Do you still have to work third shift on the BRIC?</p> <p>25 A. I work -- well, yeah, it's three p.m. to three a.m.</p>
<p style="text-align: right;">Page 10</p> <p>1 Q. And what's basic airway?</p> <p>2 A. The Combitube, King tube, oropharyngeal airway, nasal</p> <p>3 airway.</p> <p>4 Q. Have you ever been a party to a lawsuit before?</p> <p>5 A. No.</p> <p>6 Q. Any criminal history?</p> <p>7 A. No.</p> <p>8 Q. At all?</p> <p>9 A. No.</p> <p>10 Q. And where -- I'm sorry, when did you begin employment</p> <p>11 with Bronson?</p> <p>12 A. In February 1999.</p> <p>13 Q. And you're currently employed with Bronson?</p> <p>14 A. Yes, that's correct.</p> <p>15 Q. When you hired in, in February of 1999, what position</p> <p>16 did you hire in at?</p> <p>17 A. Security.</p> <p>18 Q. Security officer?</p> <p>19 A. Mmm-hmm.</p> <p>20 Q. Yes?</p> <p>21 A. Yes, that's correct.</p> <p>22 Q. I know it's your first dep. I know what you mean when</p> <p>23 you nod your head and go "mmm-hmm," but we have a</p> <p>24 court reporter who's writing --</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. What do you do in the BRIC?</p> <p>2 A. In the BRIC, basically answer the phones; we page the</p> <p>3 doctors. We do the codes. Like when somebody -- when</p> <p>4 there's a patient coding on the floor, we have to get</p> <p>5 a code team and find out what the location. We do</p> <p>6 general information, answering the phones, we answer</p> <p>7 the main ER lines. We are the central information hub</p> <p>8 for the hospital. People need information, we give</p> <p>9 that to them. We do after-hour calls for doctor's</p> <p>10 offices through Bronson for different practices.</p> <p>11 Q. So it's pretty busy 24/7?</p> <p>12 A. Yes. It can be, yes.</p> <p>13 Q. So you've had two different stints as a security</p> <p>14 officer?</p> <p>15 A. Correct.</p> <p>16 Q. Now, when you hired in, in '99 as a security officer,</p> <p>17 you received training as an officer?</p> <p>18 A. Correct.</p> <p>19 Q. You've never been a security officer before, have you?</p> <p>20 A. I had prior experience prior to that.</p> <p>21 Q. Oh, where?</p> <p>22 A. Charles Service, Incorporated.</p> <p>23 Q. I'm sorry?</p> <p>24 A. Charles Service, Incorporated. They are out of</p> <p>25 business. I believe they got bought out by, I</p>

<p style="text-align: right;">Page 13</p> <p>1 couldn't even tell you which company. It used to be 2 called CSI. Yeah, Charles, so it's no -- 3 Q. I understand. 4 A. It just happened to be the -- okay. 5 Q. And how long were you a security officer for them? 6 A. Probably from '91 to about '95 or '96. 7 Q. Any other security officer experience? 8 A. I had armored car experience for a year. I don't know 9 if that would count, but it was armed courier. 10 Q. With what company? 11 A. Wolverine Transport. 12 Q. And what did you transport, money? 13 A. Money, yes. We also stocked ATMs, we'd do -- we'd go 14 to various ATM sites and restock the cassettes, so ... 15 Q. Did you have to go through background checks for 16 employment with CSI? 17 A. Yes. 18 Q. What about Wolverine Transport? 19 A. Yes. And they are out of business, as well. 20 Q. Were you fired from any of those jobs? 21 A. No. 22 Q. A voluntary separation? 23 A. Yes. 24 Q. Okay. Were you ever an armed guard for either CSI or 25 Wolverine?</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. So how did you find this job with Bronson to be a 2 security officer in '99? 3 A. A guy I knew, Rick Mitchell, at the time I started 4 here, it was right after like the Wolverine Transport 5 was going, I heard that we were going -- we got bought 6 out by United Arms Services out of Chicago, they 7 started laying people off. This guy I knew, Rick 8 Mitchell, said, "Hey, there's an opening here." 9 He actually got me in here, so that's how I 10 started here at Bronson, because I was in the process 11 of probably losing my job at Wolverine because they 12 were downsizing and laying people off, so ... 13 Q. So when you hired in, in '99 with Bronson -- 14 A. Yes. 15 Q. -- you hired in as a security officer; yes? 16 A. That's correct. 17 Q. You received training; yes? 18 A. Yes. 19 Q. After you switched over to BRIC, you received training 20 on how to do your job at BRIC? 21 A. Yes. 22 Q. And then you came back to security; yes? 23 A. Yes. 24 Q. What were the circumstances surrounding your transfer 25 back to security?</p>
<p style="text-align: right;">Page 14</p> <p>1 A. For Wolverine, I was armed. For CSI, I was not armed. 2 Q. What about for Bronson, were you armed? 3 A. No. 4 Q. Were you given any type of OC spray -- 5 A. No. 6 Q. -- or a Taser, or anything like that? 7 A. No. 8 Q. What type of typical security or police-type equipment 9 were you given from Bronson? 10 A. A radio. 11 Q. What about handcuffs? 12 A. We had handcuffs. 13 Q. Anything else? 14 A. No. 15 Q. What about body cams or shoulder mics, anything like 16 that? 17 A. We had just a mic for our radio that we could key up. 18 No body cameras. 19 Q. Do you know if the -- and when you did that, you 20 reached to your shoulder? 21 A. Depends; shoulder or chest, wherever you felt 22 comfortable carrying the mic. 23 Q. Do you know if the mic chatter is ever recorded? 24 A. Not that I'm aware of. That would be something to ask 25 Dawn Zomer, but as far as I know, it is not recorded.</p>	<p style="text-align: right;">Page 16</p> <p>1 A. As far as why I transferred back to security? 2 Q. Yeah. 3 A. Just a change. A full-time security spot opened up 4 and I just bid on it and got it, just a little bit of 5 a break from the BRIC. 6 Q. Did you have to receive any new training or -- 7 A. Yes. 8 Q. -- be retrained? 9 A. Yes. 10 Q. Was the training different at all from what you 11 received in '99 to what you received in 2016? 12 A. Yes. There was more training between patient rights 13 and restraint training, for restraining patients, if 14 needed. 15 Q. On appropriate use of restraints? 16 A. Yeah, appropriate use of restraints and how to use 17 them. 18 Q. Was that in the form of PPCT-type training? 19 A. What -- 20 Q. Have you ever heard of the phrase "PPCT"? 21 A. No. 22 Q. Pressure point control tactics? 23 A. No. It was mostly just how to put the restraints on 24 and ... 25 Q. I got you. So like wrist restraints?</p>

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1 A. Yes, wrist restraints.

2 Q. What about use of force, did you ever receive training

3 on --

4 A. We had use-of-force training --

5 MR. O'LOUGHLIN: Try and let him finish his

6 question, just so --

7 THE WITNESS: Sorry.

8 BY MR. HARRINGTON:

9 Q. That's all right. You received training on the force?

10 A. Yes.

11 Q. And tell me about that.

12 A. It was just a quick course on restraining patients.

13 It was more of like how to do like the side-by-side,

14 like walk along, with holding the wrist on the hand.

15 I mean, it wasn't real extensive. It was just a short

16 course on basically how to not hurt people and how to

17 keep yourself out of danger, from getting hurt, too.

18 Q. Were you kind of taught about continuously trying to

19 de-escalate situations?

20 A. Yes.

21 Q. Did you ever learn about the plus one theory?

22 A. No, I have not heard of that.

23 Q. Okay. During your training in 2016, this took place

24 in January, correct?

25 A. January, February, around that time.

Page 18

1 Q. Did you receive training at the same time Nolan

2 Cattell received training?

3 A. I don't recall. I mean, we had a class. I don't

4 recall if he was in there or not.

5 Q. How big was your class?

6 A. Only like three or four people in it.

7 Q. Do you know if your employee file has your training

8 records in there?

9 A. I would have no idea. I have not seen my employee

10 file.

11 Q. Do you know who Nolan is?

12 A. Yeah, yes.

13 Q. In the 2016 training that took place in, you said,

14 January or February, were you shown any videos?

15 A. I don't recall.

16 Q. Nolan said he had a PowerPoint presentation when he

17 received training in January of 2016. Do you recall

18 having a PowerPoint presentation?

19 A. I mean, we had PowerPoint presentations in a lot of

20 our security trainings. I mean, there could have

21 been. I just don't recall if we had one or not.

22 Q. What about training with respect to EMTALA issues, did

23 you receive any training along that regard?

24 A. I mean, we had -- not specific to EMTALA. We had like

25 a patient-rights-type CBL, computer-based learning.

Page 19

1 Q. Say that again, C what?

2 A. Computer-based learning, CBL, a course online. As far

3 as specific EMTALA training, not that I recall.

4 Q. Who sponsored that CBL training?

5 A. That's through Bronson. It would be part of our

6 security online training.

7 Q. Was it a test that you took online?

8 A. It's computer-based, yeah.

9 Q. So, yes, it was a test?

10 A. Yes.

11 Q. Do you know how you did on that test?

12 A. I passed --

13 Q. Good.

14 A. -- so I ...

15 Q. Was there a study guide or materials you were given?

16 A. Yup. All the computer-based learning courses here,

17 you have reading material that you go through before

18 you take the test.

19 Q. So if you wanted, let's say, to do a refresher on this

20 CBL test that you took and you wanted to look at the

21 materials that you reviewed to take that test, what

22 would you ask for?

23 A. Asked for access -- I mean, you have access to the

24 computer-based learning. I mean, if I needed more, I

25 could have asked Dawn for additional.

Page 20

1 Q. Yeah, if you wanted to get it like in a paper

2 printout?

3 A. Yeah, I would ask my supervisor. I could, yeah.

4 Q. You would go see Dawn?

5 A. Yeah.

6 Q. And what would you ask Dawn?

7 A. Do we have anything on EMTALA or patient rights or

8 whatever training I needed; is there anything on, you

9 know, restraints or whatever I needed.

10 Q. My question was a little bit more specific as to what

11 you actually looked at when you did your training in

12 January of 2016.

13 A. We had the training in the training room, one of the

14 training rooms downstairs in the Gilmore building.

15 And then we had a patient rights training online, so

16 specific materials online. I mean, there could have

17 been an EMTALA section in that training for the

18 restraints, but, I mean, it was just touched upon. I

19 mean, it wasn't like an in-depth, you know.

20 Q. So patient rights, what is your understanding of this

21 patient rights training that you received that was

22 different with your second tour, I guess, as a

23 security guard?

24 A. It was more emphasis on the right to be seen, more

25 patient rights as far as the right to move about and

<p>Page 21</p> <p>1 be seen in the hospital, you know, that kind of ...</p> <p>2 Q. What else?</p> <p>3 A. Pretty much touched upon that.</p> <p>4 Q. When you say "right to be seen," you mean a right to</p> <p>5 have medical treatment?</p> <p>6 A. Yes.</p> <p>7 Q. The right to medical personnel to provide you with</p> <p>8 that treatment?</p> <p>9 A. Correct.</p> <p>10 Q. A right not to be turned away from the hospital?</p> <p>11 A. Correct.</p> <p>12 Q. And this was being provided to you as a security</p> <p>13 guard, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Or a security officer?</p> <p>16 A. Correct.</p> <p>17 Q. And you received training on if you observed somebody</p> <p>18 who appears to need medical treatment, to help get</p> <p>19 them treatment?</p> <p>20 A. Correct.</p> <p>21 Q. And have you ever done that as a security officer,</p> <p>22 helped somebody get treatment?</p> <p>23 A. Yes.</p> <p>24 Q. Without using any names, how did that come about?</p> <p>25 A. We had a call from the dispatch office that there was</p>	<p>Page 23</p> <p>1 Q. And you wheeled that person to the ER?</p> <p>2 A. Correct.</p> <p>3 Q. And helped that person get medical treatment?</p> <p>4 A. Correct.</p> <p>5 Q. And then your involvement with that person ended?</p> <p>6 A. Correct.</p> <p>7 Q. You never followed up with how that person did,</p> <p>8 correct?</p> <p>9 A. No.</p> <p>10 Q. That's a correct statement?</p> <p>11 A. That's correct.</p> <p>12 Q. Now, part of your job as a security officer is patrol?</p> <p>13 A. Yes.</p> <p>14 Q. And this person that was thought to be homeless, what</p> <p>15 time period was that? Was that in the year 2016?</p> <p>16 A. It would be 2016, my third shift, when I worked.</p> <p>17 Q. Do you remember what month that happened?</p> <p>18 A. I don't recall.</p> <p>19 Q. Do you know if it was before or after the Dunigan</p> <p>20 incident?</p> <p>21 A. It was before.</p> <p>22 Q. So if you had been patrolling as part of your regular</p> <p>23 duties and just saw this person by the garden level</p> <p>24 who appeared to be unsteady, you would have helped</p> <p>25 them get medical treatment?</p>
<p>Page 22</p> <p>1 a gentleman down on the garden level of the hospital</p> <p>2 by the ramp who was reported as homeless, and the</p> <p>3 caller wasn't sure what was going on. We went down</p> <p>4 there. He was unsteady. He was provided a wheelchair</p> <p>5 and wheeled to the emergency room because he stated</p> <p>6 that he needed to be seen.</p> <p>7 Q. Even if he didn't say he needed to be seen, based on</p> <p>8 your observations, would you have gotten him medical</p> <p>9 treatment?</p> <p>10 A. Yes, correct.</p> <p>11 Q. When you say "unsteady," you mean unsteady with his</p> <p>12 walk?</p> <p>13 A. Unsteady on his feet, yes, that's correct.</p> <p>14 Q. Meaning that as he was walking, he appeared that he</p> <p>15 could fall over at any second?</p> <p>16 A. Correct.</p> <p>17 Q. What about that person's speech, was that person's</p> <p>18 speech impaired at all?</p> <p>19 A. Slightly.</p> <p>20 Q. And you assisted that person to get that medical</p> <p>21 treatment?</p> <p>22 A. Correct.</p> <p>23 Q. Was the call from a civilian?</p> <p>24 A. I don't recall. I just remember it being dispatched</p> <p>25 over the radio.</p>	<p>Page 24</p> <p>1 A. Correct, if that's what they needed.</p> <p>2 Q. Well, if you visualized it --</p> <p>3 A. Correct.</p> <p>4 Q. -- and you thought they needed it, you would have</p> <p>5 helped them?</p> <p>6 A. Correct.</p> <p>7 Q. Whether they asked for it or not?</p> <p>8 A. Yes.</p> <p>9 Q. Whether that person had already had medical treatment</p> <p>10 and been discharged or not?</p> <p>11 A. Yes.</p> <p>12 MR. O'LOUGHLIN: Form and foundation.</p> <p>13 BY MR. HARRINGTON:</p> <p>14 Q. Because that's what would be reasonable; yes?</p> <p>15 A. Yes.</p> <p>16 MR. O'LOUGHLIN: Same.</p> <p>17 BY MR. HARRINGTON:</p> <p>18 Q. And to not do that would be unreasonable?</p> <p>19 MR. O'LOUGHLIN: Same.</p> <p>20 BY MR. HARRINGTON:</p> <p>21 Q. Go ahead.</p> <p>22 A. Yes.</p> <p>23 Q. All right. You were working on May 6, 2016, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And that was the early morning hours of the Dunigan</p>

Page 25

1 matter, correct?

2 **A. Yes.**

3 Q. Do you have any recollection of any interactions with

4 Mr. Dunigan prior to his discharge?

5 **A. I had no interactions with him prior to his discharge.**

6 Q. All interactions with him were after discharge, is

7 that correct?

8 **A. That's correct.**

9 Q. You have no idea, as of May 6, 2016, why he was at the

10 hospital?

11 **A. Correct.**

12 Q. When was your first interaction with Mr. Dunigan?

13 **A. My first interaction with Mr. Dunigan was when Officer**

14 **Nugent and Zack went out to the lobby to ask the**

15 **gentleman to leave because he'd been there apparently**

16 **for several hours past his discharge time.**

17 Q. Well, how did you get involved?

18 **A. I went out there just to stand by.**

19 Q. Because you were in the office?

20 **A. I came back to the office. We were out doing patrol**

21 **and we were in the office, and I went out there with**

22 **Zack just to stand by to make sure everything was**

23 **going to be okay.**

24 Q. When you went out to stand by to see if everything was

25 going to be okay, Nolan was still in the office

Page 26

1 monitoring the cameras, correct?

2 **A. Correct, yes.**

3 Q. It's good practice to have an officer monitoring the

4 cameras at all times?

5 **A. There is somebody in the office all the time because**

6 **it's a dispatch office.**

7 Q. You've monitored the cameras, correct?

8 **A. Correct.**

9 Q. How many cameras are there, approximately?

10 **A. Off the top of my head, I couldn't tell you an exact**

11 **number. There's a lot of cameras.**

12 Q. Nolan said about 300.

13 **A. I don't have an exact number for you. If that's what**

14 **he said, I mean, I don't -- I would say close to that,**

15 **yes.**

16 Q. Does that number seem reasonable?

17 **A. Yes.**

18 Q. All right. Was there something that brought your

19 attention to Mr. Dunigan that you felt it was

20 necessary for you to go out there?

21 **A. As far as he had overstayed his discharge time,**

22 **Officer Nugent went out. I mean, as far as anything**

23 **specific, I just went out there just to stand by to**

24 **make sure everything was going to be all right. And**

25 **it's a common practice we do that, kind of back each**

Page 27

1 **other up.**

2 Q. So you said "overstayed his discharge time." Is there

3 some type of document that says a person is only

4 allowed to stay in the hospital for a particular

5 amount of time?

6 **A. I don't recall a specific document, security document**

7 **states that. It was just a -- generally, if someone**

8 **was hanging out past their discharge time, we would go**

9 **out and make contact with them, because in the past**

10 **we've had problems with people being disruptive in the**

11 **lobby that would not want to leave the hospital**

12 **grounds after discharge.**

13 Q. Well, you've seen the videos on this case?

14 **A. Yes.**

15 Q. And there's a point in time where the officers wheel

16 out Mr. Dunigan --

17 **A. Yes.**

18 Q. -- to the outside, I guess, outside of the ER?

19 **A. Mmm-hmm.**

20 Q. Yes?

21 **A. Yes.**

22 Q. While he was in the waiting room, he wasn't being

23 disruptive, was he?

24 **A. No.**

25 Q. That's a correct statement?

Page 28

1 **A. Yes.**

2 Q. So why was he asked to leave?

3 **A. As far as -- well, he was done being seen. He was**

4 **discharged. The practice was usually -- he was**

5 **homeless. Usually we ask people to leave after a**

6 **certain period of time after they've been discharged**

7 **to prevent people from hanging out all day in the**

8 **lobby.**

9 Q. You understood, though, that he was waiting for the

10 bus?

11 **A. Yes, and he was -- apparently the bus was -- he had**

12 **not left yet for the buses, and that's the reason why**

13 **he was asked to leave, because the buses were running**

14 **at that time.**

15 Q. And had you observed Mr. Dunigan on, say, on video at

16 all prior to you going and addressing him?

17 **A. No.**

18 Q. When you went and addressed him, that was the first

19 time you had seen him, whether in person or on video,

20 to your memory?

21 **A. Correct.**

22 Q. Did you have a conversation with him when you went and

23 addressed him?

24 **A. I don't recall the exact conversation. It was more or**

25 **less listening to Officer Nugent and Zack. And the**

<p style="text-align: right;">Page 29</p> <p>1 only thing he would say was, "Take me to jail." 2 That's the only thing that he would repeat back to us. 3 Q. That's all you heard him say, ever, was, "Take me to 4 jail"? 5 A. "Take me to jail," yeah. 6 Q. Did that seem odd to you? 7 A. Slightly. 8 Q. As you're hearing that as a security officer, what's 9 going through your mind to why this individual is 10 wanting to go to jail? 11 A. I mean, I have no idea why he'd want to go to jail. I 12 mean, that would just seem like an odd thing for 13 somebody to say, so ... 14 Q. So in response to that, what did you do? 15 A. Stood by while Officer Nugent and Zack talked to him. 16 Q. Did you see him foaming from the mouth at all? 17 A. No. 18 Q. Was he slurring his words at all? 19 A. No, he was just mumbling a lot. 20 Q. When you say "mumbling" ... 21 A. Like, "Take me to jail," and just kind of mumbling 22 under his breath a little bit. It was incoherent. 23 Q. And that didn't concern you at all? 24 A. I mean, from my observation, no. He was standing. He 25 was breathing fine. We deal with a lot of homeless</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Did any words come out of your mouth in this time 2 frame to Mr. Dunigan? 3 A. Negative. 4 Q. And prior to this time frame as to when you are here 5 as depicted in Exhibit 14, you had never seen him 6 prior? 7 A. Correct. 8 Q. Did you know whether or not he had received any type 9 of medical treatment whatsoever from Bronson? 10 A. I had heard from Zack that he was discharged earlier 11 in the morning and they were letting him sit in the 12 lobby for several hours until the buses started 13 running, so I was told he was discharged. 14 Q. Let me ask you this: As you're sitting there, what if 15 in your mind you say, "You know what? Something 16 doesn't seem right with this guy. I think he still 17 needs to be looked at medically"; if you thought that, 18 what would you do? 19 A. If I thought that? 20 MR. O'LOUGHLIN: Form and foundation. 21 BY MR. HARRINGTON: 22 Q. Yes, if you thought that. 23 A. I would have notified the nurse at the desk that this 24 guy needs to be seen again. 25 Q. And that's part of your responsibilities as a security</p>
<p style="text-align: right;">Page 30</p> <p>1 people that are -- their condition is, they're 2 slightly slurred a lot, like constantly. 3 Q. Who was taking the lead when they were addressing 4 Mr. Dunigan while he was in the ER waiting area east? 5 A. At what point, when he's being evicted or -- 6 Q. No, when he's just being addressed, when you first go 7 out there. 8 A. It would be Officer Nugent. 9 Q. Okay. I'm going to show you Exhibit 14 that we had 10 marked in Officer Nolan Cattell's deposition. 11 A. Mmm-hmm. 12 Q. Do you see Exhibit 14? 13 A. Correct. 14 Q. Are you depicted in that photograph? 15 A. I am leaning against a pillar. 16 Q. You are the individual with his right arm stretched 17 out? 18 A. Correct. 19 Q. May I see that back, please? 20 A. Sure. 21 Q. And the image that we're seeing in Exhibit 14, where 22 you're leaning against, as you say, a pillar, this is 23 the time frame as to when you first address 24 Mr. Dunigan? 25 A. As I recall, yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 officer? 2 MR. O'LOUGHLIN: Form and foundation. 3 BY MR. HARRINGTON: 4 Q. Go ahead. 5 A. Correct. 6 Q. You said he was breathing fine -- 7 A. Yes. 8 Q. -- maybe a minute or two ago. 9 A. Yes. 10 Q. At any time in your dealings with Mr. Dunigan, did you 11 notice a change in his breathing? 12 A. I did not. 13 Q. You've seen video? 14 A. Of the police car, yes, when he was -- after he was 15 transported. 16 Q. You've seen police car video? 17 A. It was all over the news, yeah. It was on the news. 18 I've seen not the whole video, but I've seen as they 19 were transporting him to the jail. 20 Q. And the video that you've seen -- 21 A. Yes. 22 Q. -- also has audio? 23 A. Yes. 24 Q. And you've heard that breathing that he had? 25 A. The snoring respirations, yes. He was not doing any</p>

Page 33

1 of that in the lobby or out front.

2 Q. Well, you were with him out front, right?

3 A. Yes, correct.

4 Q. Were you with him when he was loaded into the car?

5 A. Yes.

6 Q. And if you had heard any of those snoring

7 respirations, would that have caused you concern?

8 A. Yes.

9 MR. O'LOUGHLIN: Form and foundation.

10 BY MR. HARRINGTON:

11 Q. If you had heard that, would you have said, "You know

12 what, this guy should be checked out"?

13 A. Yes.

14 Q. That would have been reasonable?

15 MR. O'LOUGHLIN: Form and foundation.

16 A. Correct.

17 BY MR. HARRINGTON:

18 Q. To not do that would be unreasonable?

19 MR. O'LOUGHLIN: Same.

20 A. Correct.

21 BY MR. HARRINGTON:

22 Q. You were with Mr. Dunigan when he was being loaded

23 into the police car, correct?

24 A. Yes.

25 Q. Did you assist in loading him into the police car?

Page 34

1 A. Yes.

2 Q. What part of his body did you grab to help load him

3 into --

4 A. I had his feet. Art had his shoulders, and I believe

5 Nugent was next to me, too. We had the feet in, and

6 then Art went around the driver's side and helped him

7 with getting him by the shoulders to sit him up.

8 Q. Real quick, when you said "snoring respirations," in

9 any of your EMT training, what is that significant of?

10 A. Respiratory failure, could lead up to -- trouble

11 breathing, I should say.

12 Q. What about congestive heart failure?

13 A. Possibly. I mean, I'm not -- as an EMT, that would be

14 more in the realm -- I mean, yeah, it would be, it

15 would obviously cause some concern as far as

16 congestive heart failure. That wouldn't, couldn't be

17 determined, usually, until we put him up on a monitor

18 to show the heart rhythm. That would be a paramedic

19 issue, so ...

20 Q. But you know what congestive heart failure is?

21 A. Yup.

22 Q. You know what it is in connection with your training

23 as an EMT?

24 A. Yes.

25 Q. And sometimes snoring respirations can be consistent

Page 35

1 with somebody who's in congestive heart failure?

2 A. Correct.

3 Q. If none of those signs of this snoring respirations

4 were present when you were dealing with Mr. Dunigan as

5 depicted in Exhibit 14, and then they started to

6 develop when he was out by the car, that's a definite

7 change in his condition --

8 MR. O'LOUGHLIN: Form and foundation.

9 BY MR. HARRINGTON:

10 Q. -- yes?

11 A. Correct.

12 Q. And that is a change that would require medical

13 treatment?

14 MR. O'LOUGHLIN: Same.

15 A. Correct.

16 BY MR. HARRINGTON:

17 Q. And if you saw that change, you would have gotten him

18 treatment?

19 MR. O'LOUGHLIN: Same.

20 A. Yes.

21 BY MR. HARRINGTON:

22 Q. When you were addressing Mr. Dunigan outside of the

23 police vehicle, that was a Kalamazoo Public Safety

24 vehicle, correct?

25 A. Correct.

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1 Q. Was there an issue about having to wait for a second

2 vehicle that had a gate or a break between?

3 A. Yes. The hospital officer that was assigned to the

4 hospital that day, his cruiser did not have a cage for

5 prisoner transport, so he had to call for a second

6 unit to come that had a cage for transport.

7 Q. And then when that vehicle came, who was driving that

8 vehicle?

9 A. It was another -- I don't know his name. It was

10 another public safety officer. I don't recall the

11 name of the officer.

12 Q. Do you know if it was Shafer?

13 A. I couldn't tell you. I don't recall his name.

14 Q. And in preparation of your deposition today, did you

15 watch any of the videos?

16 A. No.

17 Q. But you have seen them?

18 A. I have seen partial that was on WOTV.

19 Q. And did you see the part that had the audio where it

20 said, "He was walking around, he's just playing the

21 game"?

22 A. No.

23 Q. Have you ever heard that? Let me rephrase.

24 Do you remember anybody ever saying that at

25 or around the time that Mr. Dunigan was about to be

<p style="text-align: right;">Page 37</p> <p>1 loaded inside of the --</p> <p>2 A. I think I recall --</p> <p>3 Q. Let me finish.</p> <p>4 A. Okay.</p> <p>5 Q. -- at or around the time that he was about to be</p> <p>6 loaded into the scout vehicle?</p> <p>7 A. No.</p> <p>8 Q. Okay. Do you ever remember anybody saying that at any</p> <p>9 time as it relates to Mr. Dunigan?</p> <p>10 A. After he was loaded?</p> <p>11 Q. No, before he was loaded.</p> <p>12 A. Before he was loaded? No.</p> <p>13 Q. Do you remember anybody saying that, ever --</p> <p>14 A. Not that --</p> <p>15 Q. -- something about a game?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Okay. Do you ever remember anybody ever saying, "Oh,</p> <p>18 yeah, I know the game well"?</p> <p>19 A. Before or after he was loaded in the car?</p> <p>20 Q. At any time.</p> <p>21 A. At any time? After he was loaded in the car, out</p> <p>22 front of the vehicle?</p> <p>23 Q. My question to you is, at any time --</p> <p>24 A. No.</p> <p>25 Q. -- in connection with your dealings with Mr. Dunigan,</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Do you remember anybody asking Mr. Dunigan if he wants</p> <p>2 to go in like a baby?</p> <p>3 MR. O'LOUGHLIN: Form and foundation.</p> <p>4 BY MR. HARRINGTON:</p> <p>5 Q. Meaning going, whether it be going into the car, going</p> <p>6 into --</p> <p>7 A. I don't recall anybody saying anything.</p> <p>8 Q. Do you remember anybody saying, "Sit up like an</p> <p>9 adult"?</p> <p>10 A. No.</p> <p>11 Q. Why didn't you believe Mr. Dunigan when he says his</p> <p>12 legs weren't ready?</p> <p>13 A. Unfortunately, that's a tactic a lot of folks use on</p> <p>14 us when they don't want to leave the ER. They do the</p> <p>15 old, "I'm not going to walk for you and you're going</p> <p>16 to carry me out" kind of thing, so ...</p> <p>17 And at that point I saw nothing medically</p> <p>18 that would have said, hey, this guy's really, you</p> <p>19 know, not having an issue.</p> <p>20 This is after they ran him. He had a</p> <p>21 warrant out for his arrest after Nugent ran him. That</p> <p>22 was kind of -- my mindset was, okay, if he's got a</p> <p>23 warrant out, he is not wanting to go to jail kind of</p> <p>24 thing, so he's not going to walk for us.</p> <p>25 Q. But you didn't know about the warrant until after you</p>
<p style="text-align: right;">Page 38</p> <p>1 do you recall anybody saying anything to the extent of</p> <p>2 "He was walking around, he's just playing the game"?</p> <p>3 And then somebody says, "Oh, yeah, I know the game</p> <p>4 well," something to that extent?</p> <p>5 Do you ever recall anybody ever saying</p> <p>6 anything like that?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Do you ever remember anybody saying anything like,</p> <p>9 "Mr. Dunigan, we're going to get you on your feet"?</p> <p>10 And then he's ordered to stand up, "Stand</p> <p>11 up right now."</p> <p>12 He says something to the extent, "My legs</p> <p>13 ain't ready."</p> <p>14 And then somebody says, "Bullshit. Stand</p> <p>15 up."</p> <p>16 Do you remember anything like that?</p> <p>17 A. I remember that.</p> <p>18 Q. Okay, who said bullshit?</p> <p>19 A. That would have been me.</p> <p>20 Q. Why did you say bullshit?</p> <p>21 A. Frustration.</p> <p>22 Q. Was that appropriate?</p> <p>23 A. No, it wasn't appropriate.</p> <p>24 Q. What if his legs really weren't ready?</p> <p>25 A. It wouldn't have been appropriate to say that.</p>	<p style="text-align: right;">Page 40</p> <p>1 said bullshit. True?</p> <p>2 MR. O'LOUGHLIN: Form and foundation.</p> <p>3 A. No. It was before we put him in the car. They ran</p> <p>4 him and Nugent came back. And that's when he was</p> <p>5 handcuffed, when he's out front.</p> <p>6 BY MR. HARRINGTON:</p> <p>7 Q. So you're telling me that there was a discussion</p> <p>8 outside of the police vehicle about the warrant before</p> <p>9 you said bullshit?</p> <p>10 A. Correct.</p> <p>11 Q. But you're saying that there was no evidence, ever,</p> <p>12 that Mr. Dunigan was having difficulty walking?</p> <p>13 A. Not that I could see.</p> <p>14 Q. There is discussion outside of the vehicle between the</p> <p>15 officers indicating that he's medically cleared and</p> <p>16 he's been up walking around.</p> <p>17 A. Correct.</p> <p>18 Q. Did you state that?</p> <p>19 A. I believe I said he, yes, he was up walking around in</p> <p>20 the lobby.</p> <p>21 Q. The discussion that you had -- well, did you ever see</p> <p>22 him walking around in the lobby?</p> <p>23 A. No. One of the guys said he had been up and walking</p> <p>24 around.</p> <p>25 Q. Who?</p>

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1 A. I don't recall who said that, but when I came back to

2 the office, they said, "He's been up walking around,

3 because he's been in the lobby for the past couple

4 hours, waiting for the buses," and he was still here,

5 so that's when Zack and Nugent went out there to talk

6 with him, and then I went out, so ...

7 Q. You told that to an officer who had just brought up

8 the new scout vehicle?

9 A. Okay.

10 Q. Yes?

11 A. Possibly.

12 Q. Is that true or not true?

13 A. Yes.

14 Q. So that officer would have no way to verify that

15 except to rely on what you were telling them?

16 A. Correct.

17 Q. The discussion about the warrant took place at the

18 scout vehicle, correct?

19 MR. O'LOUGHLIN: Form and foundation.

20 A. Correct.

21 BY MR. HARRINGTON:

22 Q. And it didn't take place in the hospital, correct?

23 A. No.

24 Q. That's a correct statement?

25 A. Correct.

Page 42

1 Q. Did you see him foaming at the mouth, "him" being

2 Dunigan?

3 A. No.

4 Q. And at no time did you ever hear him have any problems

5 breathing?

6 A. No.

7 Q. That's a correct statement?

8 A. That's correct.

9 Q. Real quick, Exhibit 15 to Nolan's deposition, do you

10 see that?

11 A. Yes.

12 Q. Do you know who that individual is that's wheeling

13 Mr. Dunigan?

14 A. He's an ER nurse. I don't know him by name.

15 Q. I'm going to cue up some video feed right now.

16 A. Okay.

17 MR. HARRINGTON: I'm trying to think what

18 would be the easiest way to do this. I'd like him to

19 see this. Would it be possible for both of you to

20 come over to this side while I play some of this

21 video? I mean, I can sit over on your side, it

22 doesn't matter, but ...

23 MR. O'LOUGHLIN: You're welcome to come

24 over here and turn it around. We'll get a chair.

25

Page 43

1 BY MR. HARRINGTON:

2 Q. You see the video on my screen, correct?

3 A. Yes.

4 Q. Okay. And this is the image of the scout car that

5 eventually Mr. Dunigan is placed into, correct?

6 A. Correct.

7 Q. And this is a Kalamazoo Public Safety vehicle,

8 correct?

9 A. Correct.

10 (Video played)

11 BY MR. HARRINGTON:

12 Q. Did you hear where somebody just said, "Come on,

13 Mr. Dunigan"?

14 A. Mmm-hmm.

15 Q. Yes?

16 A. Yes.

17 Q. Okay. So you can hear the audio to some extent on

18 this playback, correct?

19 A. Correct.

20 (Video played)

21 BY MR. HARRINGTON:

22 Q. Do you hear those snoring sounds, that breathing that

23 we had talked about?

24 A. Mmm-hmm.

25 MR. O'LOUGHLIN: Form and foundation.

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1 BY MR. HARRINGTON:

2 Q. Yes?

3 A. Yes.

4 Q. You understand that to be Mr. Dunigan?

5 A. Yes.

6 Q. And that is while he is standing outside of the

7 vehicle, or at least outside of the vehicle --

8 A. Correct.

9 Q. -- where you would have been in the vicinity of?

10 A. Correct.

11 Q. And you did not hear that?

12 A. No.

13 (Video played)

14 BY MR. HARRINGTON:

15 Q. The part where it said "put one foot in front of the

16 other," you heard that?

17 A. Yes.

18 Q. Who said that?

19 A. I believe that's Nugent.

20 Q. That's who it sounded like?

21 A. Mmm-hmm.

22 Q. Yes?

23 A. Yes.

24 (Video played)

25

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1 **BY MR. HARRINGTON:**

2 Q. Did you hear that part where it says, "He's walking

3 around just fine"?

4 A. Yes.

5 Q. Who said that?

6 A. I don't recall who said that. I mean, there was --

7 **MR. O'LOUGHLIN:** Just if you don't recall,

8 you don't recall.

9 **BY MR. HARRINGTON:**

10 Q. How many officers were around Mr. Dunigan at this

11 point in time?

12 A. Nugent, it was the public safety officer that drove

13 the vehicle, myself. I don't recall if Zack was out

14 there. I think Zack was out there. And Art was going

15 around to the other side, I believe.

16 **(Video played)**

17 **BY MR. HARRINGTON:**

18 Q. Did you hear that, "I know the game well"?

19 A. Yeah.

20 Q. Does that refresh your memory of somebody discussing

21 this issue about the quote-unquote game? Do you want

22 me to rewind it?

23 A. No, that's fine.

24 Q. Let me go back, because I want to see if you can tell

25 me who said ...

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1 **(Video played)**

2 **BY MR. HARRINGTON:**

3 Q. You heard that?

4 A. Yeah.

5 Q. About the game?

6 A. Yeah.

7 Q. Okay. Do you know who said "playing the game"?

8 A. It was one of the public safety officers, I just don't

9 recall which one.

10 Q. No, before "I know the game well" -- I'll go back,

11 because there's somebody that says that he was playing

12 the game, and then somebody responds and says, "I know

13 the game well."

14 A. It was Nugent or one of the other, the other --

15 Shafer, I guess.

16 Q. Was it you?

17 A. Not that I recall.

18 Q. Do you want me to go back one more time so you can

19 hear it?

20 A. Sure.

21 **(Video played)**

22 **THE WITNESS:** I remember saying he was

23 walking.

24 **(Video played)**

25

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1 **BY MR. HARRINGTON:**

2 Q. Did you hear that, "He's walking around ... playing

3 the game"?

4 A. Mmm-hmm.

5 Q. You heard that?

6 A. Mmm-hmm.

7 Q. Yes?

8 A. Yes.

9 Q. Okay. Do you know who said that?

10 A. I don't recall who said that.

11 Q. Do you know whose voice that sounded like?

12 A. No.

13 Q. Was it yours?

14 A. I don't recall saying that, I don't ...

15 Q. Yeah, but did that sound like your voice?

16 **MR. O'LOUGHLIN:** Asked and answered.

17 A. I couldn't tell you if that was my voice.

18 **BY MR. HARRINGTON:**

19 Q. Fair enough.

20 **(Video played)**

21 **BY MR. HARRINGTON:**

22 Q. So do you hear him say, "My legs ain't ready"?

23 A. Mmm-hmm.

24 Q. Yes?

25 A. Yes.

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1 Q. You have to say yes.

2 A. Yes.

3 Q. And then you responded with, "Bullshit."

4 A. Yes.

5 Q. You'd agree with me, with what we've listened to thus

6 far, there was no discussion of a warrant, correct?

7 A. Correct.

8 **(Video played)**

9 **BY MR. HARRINGTON:**

10 Q. You hear that, "Do you want to go in like a baby"?

11 A. Mmm-hmm.

12 Q. Yes?

13 A. Yes.

14 Q. Who said that?

15 A. I don't recall which officer said that. It was either

16 Nugent or --

17 Q. Was it you?

18 A. It wasn't me. I don't -- no.

19 **(Video played)**

20 **BY MR. HARRINGTON:**

21 Q. On the video, we just saw somebody get in from what

22 appears to be the rear passenger side door at 6:41:26

23 on the disk. Do you see that?

24 A. Correct.

25 Q. Who is that?

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1 A. That's Art.

2 Q. Art? What's his last name?

3 A. I don't remember his last name.

4 (Video played)

5 BY MR. HARRINGTON:

6 Q. Did you hear the, "Sit up like an adult"?

7 A. Mmm-hmm.

8 Q. Yes?

9 A. Yes.

10 Q. Who said that?

11 A. I don't recall who said that.

12 (Video played)

13 BY MR. HARRINGTON:

14 Q. Who said that, "Come on, please, please sit up like an

15 adult"? Do you know who said that?

16 A. I don't recall who said that, no.

17 (Video played)

18 BY MR. HARRINGTON:

19 Q. Did you hear that breathing, snoring sound?

20 MR. O'LOUGHLIN: Form and foundation.

21 A. Yes.

22 BY MR. HARRINGTON:

23 Q. And the time is 6:41:53?

24 A. Yes.

25 Q. And is that you standing just, that we can see the

Page 50

1 legs, standing just on the outside of the rear

2 driver's side door, I'm sorry -- yeah, the rear

3 driver's side door?

4 A. Possibly.

5 Q. You would have been right within that vicinity --

6 A. Correct.

7 Q. -- because you just helped load him in?

8 A. Correct.

9 Q. And while that time frame of 6:41:53, when we heard

10 that noise come out of Mr. Dunigan, he's actually

11 being touched by Art?

12 A. Correct.

13 Q. Art is right by his head?

14 A. Correct.

15 Q. Art is a security officer with Bronson?

16 A. Yes.

17 (Video played)

18 BY MR. HARRINGTON:

19 Q. When we get to around 6:42:50, 52-ish, somebody's

20 going to say something about "medically cleared," and

21 "up walking around." I want you to listen for that

22 and tell me who said that, okay?

23 A. Mmm-hmm -- Yes, sorry.

24 Q. I need words, please. You're doing fine, but I just

25 need words.

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1 A. Yes.

2 (Video played)

3 BY MR. HARRINGTON:

4 Q. Real quick, somebody said, "I've been hemming and

5 hawing with him in there." Do you know who said that?

6 A. I believe it was Nugent.

7 (Video played)

8 BY MR. HARRINGTON:

9 Q. You just heard the issue about a search warrant?

10 A. Yes.

11 Q. And you'd agree with me, that's the first time that

12 we've heard that on this video?

13 A. On that video, yes.

14 Q. Okay. Do you remember where in time it was discussed

15 earlier?

16 A. It was before that vehicle showed up, out front.

17 (Video played)

18 BY MR. HARRINGTON:

19 Q. Did you hear that, "He's medically cleared, he's been

20 up walking around"? Who said that?

21 A. That would be me.

22 Q. But you never witnessed that?

23 A. As far as him being medically cleared?

24 Q. Let me rephrase. You never witnessed him up walking

25 around?

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1 A. No.

2 Q. But you told that to the officers?

3 A. Correct.

4 Q. You told them that without firsthand knowledge?

5 A. Correct.

6 Q. And how did you know he had been medically cleared?

7 A. Because that's what I was told from one of the other

8 security officers.

9 (Video played)

10 BY MR. HARRINGTON:

11 Q. That part, "I believe it, you don't have to explain

12 anything to me," who said that?

13 A. That would be Officer Nugent.

14 (Video played)

15 BY MR. HARRINGTON:

16 Q. That part where it says "He switched chairs a couple

17 times," who said that?

18 A. That would be me.

19 Q. How did you know that?

20 A. Somebody had said he was up moving around.

21 Q. You didn't do anything to independently verify that,

22 though, did you?

23 A. No.

24 (Video played)

25

<p style="text-align: right;">Page 53</p> <p>1 BY MR. HARRINGTON: 2 Q. Who said, "Act like a grown-ass man. Fucking stupid"? 3 MR. O'LOUGHLIN: Form and foundation. 4 A. That would be me. 5 BY MR. HARRINGTON: 6 Q. And you were referring to Dunigan? 7 A. Correct. 8 Q. You were calling him fucking stupid? 9 A. No, I said the situation was fucking stupid. 10 Q. Okay. So the whole situation with Dunigan was, in 11 your mind, fucking stupid? 12 A. Out of frustration, yes, I said, "F-ing stupid." 13 (Video played) 14 BY MR. HARRINGTON: 15 Q. So talking about, "Put the front brakes on and shoom," 16 was that when he was in the wheelchair? 17 MR. O'LOUGHLIN: Form and foundation. 18 A. In reference to him being in the wheelchair? 19 BY MR. HARRINGTON: 20 Q. Yes. 21 A. I believe it was a comment made by one of the public 22 safety officers in reference to being in a wheelchair. 23 Q. Yeah, but the "shoom," was that meaning that they -- 24 putting the front brakes on, what would that cause a 25 wheelchair to do?</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. The officers were? 2 A. A comment was made in reference to tipping a 3 wheelchair. 4 Q. Okay. So while he is dying, there is a comment made 5 in a joking fashion about tipping Mr. Dunigan in the 6 wheelchair? 7 A. Correct. 8 Q. Who pushed the wheelchair? 9 A. As far as pushed it outside? 10 Q. Yes. 11 A. I don't recall. I believe it was Zack had ahold of 12 the wheelchair. 13 Q. Do you remember who made the comment about putting the 14 front brakes on the wheelchair? 15 A. It was a public safety officer. 16 Q. Let me go back just a little bit in time. 17 (Video played) 18 BY MR. HARRINGTON: 19 Q. Did you hear that, where, "You put the front brakes on 20 and go shoom"? 21 A. Yes. 22 Q. Who said that? 23 A. That would be the other public safety -- I guess it 24 would be Shafer, if that's his name. The guy who 25 showed up with the second cruiser.</p>
<p style="text-align: right;">Page 54</p> <p>1 A. To possibly, or just -- I think he's referring to 2 somebody dumping somebody on the ground, possibly. 3 Q. In reference to wanting to do that with Dunigan? 4 A. Correct. 5 Q. Why would you guys be talking in that kind of a manner 6 about this man? 7 A. I think he was making a, trying to make a joke about 8 it, with trying to lighten the situation. 9 Q. You understand he's dying now? 10 MR. O'LOUGHLIN: Form and foundation. 11 A. Yeah. 12 BY MR. HARRINGTON: 13 Q. You understand that now? 14 A. After seeing the video, yes. 15 Q. And while he's dying, you guys are making a joke about 16 tipping him in the wheelchair? 17 A. There was a joke -- 18 MR. O'LOUGHLIN: What's the question? 19 MR. HARRINGTON: That is the question. 20 MR. O'LOUGHLIN: That's not a question. 21 BY MR. HARRINGTON: 22 Q. So while he was dying, you guys were making a joke 23 about tipping him in a wheelchair, is that correct? 24 A. I wasn't making a joke about tipping him in the 25 wheelchair.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. And you recall this from independent memory, correct? 2 A. Correct. 3 Q. And he was asking somebody if you guys would do that, 4 right? Let me rephrase. 5 Do you remember who he was asking that 6 towards, or was that just asked towards the group? 7 A. I think it was just, in general, towards the group 8 that was standing out there. It was in a joking 9 fashion. 10 Q. Hindsight, looking back on this, highly inappropriate, 11 correct? 12 A. Correct. 13 (Video played) 14 BY MR. HARRINGTON: 15 Q. Who said, "I wanted to and thought about it," with 16 respect to tipping him in the wheelchair? 17 A. That would be me. 18 Q. Why did you want to tip him? 19 A. I wouldn't want to tip him. It was out of frustration 20 in the moment, responding to the public safety 21 officer. But I would never tip anybody out of a 22 wheelchair. That would be wrong. 23 Q. Were you disciplined in any way, shape, or form with 24 respect to the Dunigan matter? 25 A. No.</p>

<p style="text-align: right;">Page 57</p> <p>1 Q. Did you ever speak with risk management in any way 2 regarding the Dunigan matter? 3 MR. O'LOUGHLIN: I think we're getting into 4 areas of peer review now, so don't answer that 5 question. 6 MR. HARRINGTON: Just so I'm clear, any 7 type of questions relating to whether or not, not even 8 getting into content, even if he did have a 9 conversation with risk management, are you instructing 10 him not to answer? 11 MR. O'LOUGHLIN: No, he can answer that, 12 I'm sorry. He could answer whether he had one; 13 however, the content is protected by the peer review 14 privilege. 15 BY MR. HARRINGTON: 16 Q. Did you have any type of communications with risk 17 management regarding the Dunigan matter? 18 A. Yes. 19 Q. Okay. Did you ever write a statement out in any way, 20 shape, or form for risk management? 21 A. No. 22 Q. Okay. You did write a statement out regarding the 23 Dunigan incident? 24 A. For security. 25 Q. Yes?</p>	<p style="text-align: right;">Page 59</p> <p>1 MR. HARRINGTON: Peer review, that one. 2 MR. O'LOUGHLIN: Can you imagine that if 3 I'm in a room with two employees of my client 4 discussing something, that it wouldn't be privileged 5 and I would allow him to answer it? 6 MR. HARRINGTON: Well, if they're all 7 employees, I see where you're coming from. I just 8 want to make sure that -- 9 MR. O'LOUGHLIN: See where I'm coming from? 10 MR. HARRINGTON: All I'm asking is, I just 11 don't want to keep asking questions just to lay a 12 foundation. I just want to move on and just say that 13 you're going to instruct him not to answer on 14 privilege, that's all. 15 MR. O'LOUGHLIN: With such a broad 16 question, the answer is, broadly, yes. 17 MR. HARRINGTON: Okay. 18 BY MR. HARRINGTON: 19 Q. Were you ever questioned by anybody from Bronson 20 Hospital as to why you used profanity with respect to 21 the Dunigan matter? 22 A. No. 23 Q. Were you ever questioned by anybody from the hospital 24 as to why you were joking about tipping a human being 25 in a wheelchair?</p>
<p style="text-align: right;">Page 58</p> <p>1 A. Yes. 2 Q. But you did not do one for risk management, true? 3 A. True. 4 Q. Did you ever give a recorded statement, either video 5 or audio, to risk management about this incident? 6 A. No. 7 MR. HARRINGTON: And I presume, Counsel, if 8 I ask him any questions at all as to what he said with 9 risk management, you would instruct him not to answer, 10 so I don't have to lay a foundation on that? 11 MR. O'LOUGHLIN: Was I also present? 12 THE WITNESS: Yes. 13 MR. O'LOUGHLIN: Thank you. 14 MR. HARRINGTON: But the answer to my 15 question is, you'll instruct him not to answer on 16 that. 17 MR. O'LOUGHLIN: No. It's attorney-client 18 privileged. I'm in the room with him and risk 19 management. 20 MR. HARRINGTON: Right. So, I mean, what 21 I'm getting at is if I ask him any of these questions 22 about what he said to risk management, you're going to 23 object to privilege based on attorney-client and -- 24 what's that other privilege you guys raise? 25 MR. O'LOUGHLIN: Peer review.</p>	<p style="text-align: right;">Page 60</p> <p>1 A. No. 2 Q. Were you ever questioned by anybody from Bronson 3 Hospital -- 4 MR. O'LOUGHLIN: Let's hold up here. Are 5 you talking about the questions in these meetings? 6 MR. HARRINGTON: I'm talking about -- I'm 7 asking a broad question if anybody from Bronson 8 Hospital ever asked him a question as to why he would 9 use profanity in connection with the Dunigan matter. 10 MR. O'LOUGHLIN: Outside of discussions 11 with risk management and attorneys? 12 MR. HARRINGTON: At any time. 13 MR. O'LOUGHLIN: Don't answer as to any 14 conversations with risk management and me. 15 MR. HARRINGTON: Okay. He can answer if it 16 was asked and then -- 17 MR. O'LOUGHLIN: No, he can't. 18 MR. HARRINGTON: He can answer if it was 19 asked, and then if it was in the presence of an 20 attorney, I don't get to know -- at least -- from what 21 I'm hearing it doesn't sound like I get to know, but I 22 get to know at least if that was ever asked by 23 anybody. 24 MR. O'LOUGHLIN: That's a pure misstatement 25 of privilege and how it works. You think you can get</p>

<p>Page 61</p> <p>1 all my questions but not the answers?</p> <p>2 MR. HARRINGTON: No. I'm asking anybody</p> <p>3 from Bronson Hospital. You're not from Bronson</p> <p>4 Hospital. You're from a law firm.</p> <p>5 MR. O'LOUGHLIN: If I'm present in the room</p> <p>6 with risk management and this witness, those</p> <p>7 conversations are privileged.</p> <p>8 MR. HARRINGTON: So if I ask him the</p> <p>9 question if anybody had ever asked him those questions</p> <p>10 regarding his language or what he was saying, say,</p> <p>11 outside of the car when this was happening, if it</p> <p>12 happened in your presence, you're asserting privilege?</p> <p>13 MR. O'LOUGHLIN: Absolutely.</p> <p>14 MR. HARRINGTON: Got it.</p> <p>15 BY MR. HARRINGTON:</p> <p>16 Q. Outside of an attorney's presence, did anybody from</p> <p>17 risk management ever ask you any of those questions as</p> <p>18 to the profanity that you used in connection with</p> <p>19 Mr. Dunigan?</p> <p>20 A. No.</p> <p>21 Q. Did anybody from Bronson Hospital, outside of the</p> <p>22 presence of your attorney, ever ask you any questions</p> <p>23 about, really, how you handled the Dunigan situation?</p> <p>24 A. No.</p> <p>25 (Video played)</p>	<p>Page 63</p> <p>1 (Video played)</p> <p>2 BY MR. HARRINGTON:</p> <p>3 Q. I'm going to go back to my seat.</p> <p>4 Document -- well, Exhibit Number 17 that we</p> <p>5 marked at the previous deposition, do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. And that is a report that you filled out?</p> <p>8 A. That would be a trespass form, yes.</p> <p>9 Q. Okay. You filled this out after Mr. Dunigan had been</p> <p>10 transported away from the scene, correct?</p> <p>11 MR. O'LOUGHLIN: Form and foundation.</p> <p>12 A. Correct.</p> <p>13 BY MR. HARRINGTON:</p> <p>14 Q. Okay, you wrote what time?</p> <p>15 A. 0645.</p> <p>16 Q. And we know that that was after Mr. Dunigan was in the</p> <p>17 custody of the Kalamazoo Public Safety, correct?</p> <p>18 A. Correct.</p> <p>19 Q. You checked that he was, his conduct was disorderly</p> <p>20 conduct?</p> <p>21 A. Yes.</p> <p>22 Q. What was disorderly about his conduct?</p> <p>23 A. I guess at one point when in the lobby he kind of</p> <p>24 pulled away from Zack and Nugent.</p> <p>25 Q. Did you see that?</p>
<p>Page 62</p> <p>1 BY MR. HARRINGTON:</p> <p>2 Q. Did you hear the, "All right, guys, see you later"?</p> <p>3 A. Yes.</p> <p>4 Q. Who said that?</p> <p>5 A. That would be Nugent.</p> <p>6 Q. At this point in time, are you still at the car?</p> <p>7 A. Negative.</p> <p>8 Q. Okay. When he says, "All right, see you later," you</p> <p>9 remember that in your mind, right?</p> <p>10 A. Correct.</p> <p>11 MR. O'LOUGHLIN: Form and foundation.</p> <p>12 Do you remember it from that day --</p> <p>13 THE WITNESS: Yes.</p> <p>14 MR. O'LOUGHLIN: -- or from watching the</p> <p>15 video?</p> <p>16 THE WITNESS: Well, mainly from the video,</p> <p>17 but at that point we were walking away from the</p> <p>18 vehicle back inside.</p> <p>19 BY MR. HARRINGTON:</p> <p>20 Q. All right. And as it appears on the screen of this</p> <p>21 video, that time is 6:44:02. Do you agree?</p> <p>22 A. Yes.</p> <p>23 Q. Okay, so at 6:44:02, as depicted on this screen, you</p> <p>24 are literally walking away from the scout car?</p> <p>25 A. As I recall, yes.</p>	<p>Page 64</p> <p>1 A. Yes, I was standing there.</p> <p>2 Q. How did he pull away?</p> <p>3 A. Kind of jerked away, like kind of jerked.</p> <p>4 Q. And that was a disorderly?</p> <p>5 A. A little bit, yes.</p> <p>6 Q. Okay. What else was disorderly?</p> <p>7 A. As he was being walked out, the jerking away at the</p> <p>8 time or not -- the refusing to walk. And that's</p> <p>9 something that we've dealt with before with people we</p> <p>10 were escorting out, they refuse to walk, would be</p> <p>11 trespass.</p> <p>12 Q. Anything else?</p> <p>13 A. No.</p> <p>14 Q. For the explanation as to disorderly conduct, you</p> <p>15 didn't write those things about jerking away, did you?</p> <p>16 A. No. I wrote refusing to leave, not cooperating.</p> <p>17 Q. Right. You wrote, "Refusing to leave, not</p> <p>18 cooperating." Correct?</p> <p>19 A. Correct.</p> <p>20 Q. You did not write, "Pulling away from an officer."</p> <p>21 Correct?</p> <p>22 A. That would be correct. Hence is why I wrote "not</p> <p>23 cooperating." Did I word it pulling away? No.</p> <p>24 That's why I put not cooperating.</p> <p>25 Q. But that's something you could have wrote, right?</p>

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1 A. Yes.
2 Q. You've checked a few other boxes on Exhibit 17. Do
3 you see that?
4 A. Yes.
5 Q. After checking disorderly conduct, you checked: Have
6 been banned from the premises.
7 Do you see that?
8 A. Correct.
9 Q. And that's James Dunigan was banned from the premises?
10 A. Correct.
11 Q. What does that mean?
12 A. It means the subject's banned from the premises unless
13 seeking medical treatment, is my understanding from
14 what I was told in security training.
15 Q. And then the next box you checked, it says, "Remained
16 on the premises after being forbidden to do so"?
17 A. Correct.
18 Q. Was that something that he was doing before he was
19 taken away by Kalamazoo?
20 A. Before he was taken away, he was remaining in the
21 lobby when the buses were running, after like several
22 hours after his discharge thing.
23 Q. So he was forbidden to be on the property?
24 A. After he was taken away, yes. Once we -- when we
25 trespass somebody, we fill one of these out and that

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1 means it's good for a year. They can only be there to
2 seek medical attention. They're not to be hanging
3 around or like wandering the premises.
4 Q. So you get a lot of people, so to speak, on the
5 property that just hang around?
6 A. Correct.
7 Q. And for those individuals you fill out these forms,
8 correct?
9 A. Those that have been trespassed, correct.
10 Q. Okay. And these are individuals that you believe are
11 not seeking medical treatment?
12 A. Correct.
13 Q. These are not medical records, this document
14 number 17?
15 A. No.
16 Q. This is just something for the overall safety of the
17 hospital?
18 A. Correct.
19 Q. How many of these have you filled out in your career?
20 A. I don't recall.
21 Q. Where are they kept?
22 A. In the security office in a book so different shifts
23 can refer back to it. We trespass a person for
24 whatever reason, whether it be panhandling, disorderly
25 conduct, bothering patients or customers, we fill

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1 these out.
2 A lot -- not a lot. Sometimes the people
3 that we've trespassed would return back to the
4 property after being trespassed, and this was a way to
5 refer back to, the other shifts could refer back, "Hey
6 has this guy been trespassed," and they could refer
7 back to that, so ...
8 It's also so the city could use that as a
9 reference to pick somebody up for trespassing, too,
10 that they've already been banned for trespassing.
11 Q. Who maintains these?
12 A. As far as filing?
13 Q. Yeah, who keeps them?
14 A. Well, they're in a book in the security office. I
15 believe they're filed at the end of the cycle in
16 records for -- I think Dawn deals with that, I
17 believe.
18 Q. And if I wanted to get a copy of every one of these
19 trespass forms that you had filled out, how would I
20 get those?
21 A. Contact Dawn Zomer.
22 Q. And, I mean, are they ever destroyed?
23 MR. O'LOUGHLIN: Foundation.
24 A. I don't know. I believe they're kept in records.
25

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1 BY MR. HARRINGTON:
2 Q. Because you'd want to know who the regular offenders
3 are, right?
4 A. Right.
5 Q. And if somebody, let's say -- I mean, these are good
6 for a year, correct?
7 A. Yeah. It's a big, thick book. It's a binder about
8 that big that's kept in there.
9 Q. And just so the record's clear, you held up your hands
10 on top of each other showing how high they were, and
11 it was approximately twelve inches?
12 A. Yeah. It's a thick folder, yeah, for trespass
13 complaints.
14 Q. Dating back how far?
15 MR. O'LOUGHLIN: That looked like twelve
16 inches to you?
17 MR. HARRINGTON: Well, the first time it
18 did. The second time it didn't.
19 A. It's a thick folder, I don't know the exact diameter
20 or dimensions of it. It's a big book.
21 I don't know how -- I assume they're back a
22 year. I have not looked through the whole book to see
23 how far back they go.
24 BY MR. HARRINGTON:
25 Q. Well, if they're good for a year, they would at least

<p style="text-align: right;">Page 69</p> <p>1 be in the book?</p> <p>2 A. They'd be in the book. You would assume that, yes.</p> <p>3 Q. Okay. But you've seen some older than a year in</p> <p>4 there?</p> <p>5 A. I don't recall the dates on them.</p> <p>6 Q. Okay. In your second stint as an officer in January</p> <p>7 of 2016 to October of 2016, how many of these trespass</p> <p>8 forms did you write?</p> <p>9 A. I couldn't give you an exact number. I've written a</p> <p>10 few.</p> <p>11 Q. I mean, a fair amount?</p> <p>12 A. Yes. Without going back through the book and</p> <p>13 counting, I couldn't give you an exact number of how</p> <p>14 many I filled out.</p> <p>15 Q. More than ten, more than twenty?</p> <p>16 A. I'd say less than twenty but more than ten.</p> <p>17 Q. Okay, somewhere in there?</p> <p>18 A. Yeah.</p> <p>19 Q. And these individuals are primarily, almost always</p> <p>20 like homeless-looking folks?</p> <p>21 MR. O'LOUGHLIN: Form and foundation.</p> <p>22 A. Not always homeless. We have people just wandering in</p> <p>23 off the streets up here, just to wander. Not</p> <p>24 necessarily homeless, but they don't, they're here for</p> <p>25 no other reason other than to just wander and</p>	<p style="text-align: right;">Page 71</p> <p>1 if we get a complaint call, you know, if the person's</p> <p>2 disruptive to the campus, then they need to go.</p> <p>3 Whether they're black, white, I don't look at that, I</p> <p>4 just --</p> <p>5 Q. But if you were to look at the body of work that</p> <p>6 you've done as far as these trespass forms from</p> <p>7 January of 2016 to October of 2016, you would believe</p> <p>8 that the percentage of these forms that you wrote is</p> <p>9 approximately fifty percent African-American and</p> <p>10 fifty percent, say, everything else?</p> <p>11 MR. O'LOUGHLIN: Form and foundation.</p> <p>12 BY MR. HARRINGTON:</p> <p>13 Q. Go ahead.</p> <p>14 A. I honestly couldn't tell you. I'm just guessing that</p> <p>15 it's half and half, but as far as whether there are</p> <p>16 more black people than white people, I couldn't tell</p> <p>17 you. I've never kept track of that, you know, I've</p> <p>18 kicked out this many black people, I've kicked out</p> <p>19 this many white people.</p> <p>20 If they're an issue on the campus, I</p> <p>21 respond to the call and deal with the call. Whether</p> <p>22 they're black, white, Hispanic, red, green, my job as</p> <p>23 a security officer was campus safety, so ...</p> <p>24 Q. You're white, correct?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 70</p> <p>1 panhandle. It hasn't always been homeless people.</p> <p>2 BY MR. HARRINGTON:</p> <p>3 Q. But do they have like a certain look, like the clothes</p> <p>4 are kind of raggedy?</p> <p>5 A. No.</p> <p>6 Q. Okay.</p> <p>7 A. I've had homeless people that are dressed very nicely</p> <p>8 that you would -- on first look you wouldn't know that</p> <p>9 they're homeless.</p> <p>10 Q. But, I mean, have you ever issued or written one of</p> <p>11 these trespass forms, say, like to somebody who is</p> <p>12 wearing like a suit, like I am today? And I'm</p> <p>13 referring to the 2016 form.</p> <p>14 A. No.</p> <p>15 Q. What percentage of the individuals that you've written</p> <p>16 these trespass forms for are African-American versus</p> <p>17 non-African-American, an estimate?</p> <p>18 MR. O'LOUGHLIN: Form and foundation.</p> <p>19 A. I couldn't tell you, it's about -- I mean, I've</p> <p>20 trespassed people black and white, I mean ...</p> <p>21 BY MR. HARRINGTON:</p> <p>22 Q. Sure. What percentage?</p> <p>23 A. I'd say it's half and half. I mean, I don't keep</p> <p>24 track of a percentage. I don't look for, "Oh, this is</p> <p>25 a black guy." I mean, I respond to the calls that --</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. Officer Nugent is white, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Officer Shafer is white, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Officer Zack is, he's white, correct?</p> <p>6 A. He's Caucasian. I don't know -- he's kind of</p> <p>7 olive-skinned. I don't know if he's mixed with -- I</p> <p>8 have never asked him, I've never -- you could say he's</p> <p>9 white, but he looks more Middle Eastern, I guess.</p> <p>10 Q. The other officer was who?</p> <p>11 A. Art.</p> <p>12 Q. And he's white?</p> <p>13 A. Art's black.</p> <p>14 Q. Art's black?</p> <p>15 A. Yeah, he's African-American.</p> <p>16 Q. He's the only African-American that dealt with</p> <p>17 Mr. Dunigan that evening, correct?</p> <p>18 A. Correct.</p> <p>19 Q. Well, that early morning hours, I guess you could say.</p> <p>20 A. Correct, yes.</p> <p>21 Q. And Mr. Dunigan, obviously, is African-American?</p> <p>22 A. Yes.</p> <p>23 Q. Do you see the document in front of you that was</p> <p>24 marked Exhibit 12 to Nolan's deposition?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 73</p> <p>1 Q. And is that your report, at least -- let me put it 2 this way, the contents of the first page continuing to 3 the part of the second page? 4 A. Yes, it has my initials on it. I would say yes. 5 Q. Okay. Does this look like the report form? 6 MR. O'LOUGHLIN: Form and foundation. 7 A. It's a report that I wrote up, yes. 8 BY MR. HARRINGTON: 9 Q. Yeah, but this is a Word document, right? 10 A. Correct. 11 Q. You didn't write it on a Word document. 12 MR. O'LOUGHLIN: Form and foundation. 13 BY MR. HARRINGTON: 14 Q. Correct? 15 A. I wrote it on the -- 16 Q. Landesk, right? 17 A. Right, the Landesk. That would be our tickets. 18 Q. Landesk is different than Word? 19 A. Correct. 20 Q. Do you have any idea why this document was copied onto 21 a Word document? 22 A. I couldn't tell you. 23 Q. Have you ever seen the printed version of the Landesk 24 report? 25 A. Not to my knowledge, no.</p>	<p style="text-align: right;">Page 75</p> <p>1 A. No, correct. 2 Q. -- so you wrote it while you were on the clock. 3 A. As I recall, yes. 4 Q. All right. I mean, you don't want to do work for 5 free, right? 6 A. Right. 7 Q. And this is part of your work? 8 A. Correct. 9 Q. But your shift ends at seven a.m., correct? 10 A. Correct. 11 Q. When did you have time between when Dunigan was 12 transported to write this report? 13 A. I remember writing a brief -- it wasn't even like a 14 couple sentences before I punched out, I remember, in 15 the office, if I recall. 16 Q. What part of this report as we're looking at on 17 Exhibit 17 did you write before you punched out? 18 A. This? 19 Q. Yeah. 20 A. This was not written before I punched out. This would 21 be written after, like a few days later. 22 Q. All right. From the time that you punched out on 23 May 6, 2016, to the time that you completed the report 24 as marked as Exhibit -- I'm sorry, I think that's 25 Exhibit 12. I think I referenced 17. It's</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. That is something that can be done, right? 2 A. As far as printing off documents off Landesk? I 3 believe so. I've never done it. Might want to check 4 with Dawn Zomer. I mean, most of what we do was our 5 route tickets and complaints, where you put it right 6 in the Landesk and you hit enter and it was filed, 7 so ... 8 Q. When did you write your report? 9 A. I believe I wrote a Landesk ticket that morning, and I 10 believe I made, a day or couple days later 11 corrections, because I had some spelling errors in 12 Landesk. 13 Q. When you say "that morning," what do you mean you 14 wrote it that morning? 15 A. The morning of Dunigan, I wrote like a brief 16 statement, and I went back a few days later and then 17 did the whole -- after the whole thing with Dunigan, 18 with him being transported, I wrote the whole 19 detailed ... 20 Q. So you wrote the first part of it before you knew he 21 died, correct? 22 A. Correct. 23 Q. You wrote this while you were on the clock, correct? 24 I mean, you wouldn't punch out and then go write a 25 report --</p>	<p style="text-align: right;">Page 76</p> <p>1 Exhibit 12. 2 A. Correct. 3 Q. Did you, had you spoke to a lawyer? 4 A. No. 5 Q. Had you spoke to anybody in risk management? 6 A. No. 7 Q. Had you spoken to any of the co-officers who were 8 involved with Dunigan that were employed by Bronson at 9 the time about the Dunigan incident? 10 A. I know we, I had, not that -- I don't recall. I don't 11 remember if I was off that weekend and didn't come 12 back until like Monday or Tuesday and that's when I 13 found out that he had passed. I think I spoke to Zack 14 on our next shift. And then I remember Dawn Zomer 15 getting ahold of me, saying I needed to write a more 16 detailed report. 17 Q. Who told you to write the report? 18 A. Our supervisor, Dawn Zomer. 19 Q. But you had already started to write a report. 20 MR. O'LOUGHLIN: Form and foundation. 21 BY MR. HARRINGTON: 22 Q. Right? 23 A. Correct. 24 Q. Do you remember what you wrote right before you 25 punched out?</p>

<p style="text-align: right;">Page 77</p> <p>1 A. No.</p> <p>2 Q. When you write a report, it's important to be as</p> <p>3 accurate as possible, correct?</p> <p>4 A. Correct.</p> <p>5 Q. To detail exactly what you remember, correct?</p> <p>6 A. Correct.</p> <p>7 Q. And to be truthful, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Did you review any documents prior to completing your</p> <p>10 report?</p> <p>11 A. No, not that I recall.</p> <p>12 Q. You didn't review any video?</p> <p>13 MR. O'LOUGHLIN: Form and foundation.</p> <p>14 BY MR. HARRINGTON:</p> <p>15 Q. Before writing the report, correct?</p> <p>16 A. No.</p> <p>17 Q. That's a correct statement?</p> <p>18 A. Correct.</p> <p>19 Q. You didn't review any audio before writing your</p> <p>20 report, correct?</p> <p>21 A. Correct.</p> <p>22 Q. You didn't speak with Nugent or Shafer about what</p> <p>23 happened to Mr. Dunigan before writing your report,</p> <p>24 correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 79</p> <p>1 A. If I knew he needed medical assistance, sure.</p> <p>2 Q. If you had reason to believe he needed medical</p> <p>3 assistance, you could have?</p> <p>4 A. Sure.</p> <p>5 Q. Okay. I want to go through your report.</p> <p>6 A. Okay.</p> <p>7 Q. The fourth line on the first page, do you see that?</p> <p>8 Do you see that, where it says "apparently"?</p> <p>9 A. Yeah.</p> <p>10 Q. Apparently staff had told him he could wait until the</p> <p>11 buses started running?</p> <p>12 A. Correct.</p> <p>13 Q. Do you know what staff?</p> <p>14 A. I couldn't tell you what staff. I know apparently it</p> <p>15 was ER staff.</p> <p>16 Q. What time do the buses start running?</p> <p>17 A. I think about six. I don't really know the bus</p> <p>18 schedule. I don't have -- I don't, you know, I don't</p> <p>19 ride the bus, so ...</p> <p>20 Q. Your understanding is you believe they start running</p> <p>21 around six?</p> <p>22 A. Six a.m., yeah.</p> <p>23 Q. What buses?</p> <p>24 A. Metro Transit.</p> <p>25 Q. Who decided to let Dunigan wait until six a.m.?</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. What about Rickli, Carlisle, those individuals, did</p> <p>2 you speak with them --</p> <p>3 A. I think there was a little --</p> <p>4 Q. Hang on. Did you speak with them about the incident</p> <p>5 before writing your report?</p> <p>6 A. Yes.</p> <p>7 Q. Did you talk about what would be in the contents of</p> <p>8 your report before you wrote it?</p> <p>9 A. No.</p> <p>10 Q. What did you speak to them about?</p> <p>11 A. I think it was a general discussion about what</p> <p>12 happened. There was no discussion about what each</p> <p>13 individual was putting in his report. There was just</p> <p>14 a discussion about, you know, the gentleman passing</p> <p>15 away in police custody.</p> <p>16 Q. You thought he was faking, Dunigan?</p> <p>17 A. Correct.</p> <p>18 Q. We now know he was not.</p> <p>19 A. Correct.</p> <p>20 MR. O'LOUGHLIN: Form and foundation.</p> <p>21 BY MR. HARRINGTON:</p> <p>22 Q. If you wanted to, you could have gone and got medical</p> <p>23 treatment for Mr. Dunigan?</p> <p>24 A. If I knew what the situation was.</p> <p>25 Q. If you wanted to?</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I believe, from what I heard when I got back to the</p> <p>2 security office, I believe ER staff had told him he</p> <p>3 could wait. And then it was just the consensus from</p> <p>4 the security that, "Yeah, we're going to let him wait</p> <p>5 until the buses start running, let him sit in the</p> <p>6 lobby for a couple hours."</p> <p>7 Q. The next sentence says: At 5:15, Mr. Dunigan called</p> <p>8 for PSO Knauf -- spelled K-N-A-U-F -- from the ER desk</p> <p>9 to come talk to him.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Is that something you witnessed?</p> <p>13 A. I think I heard that on hearsay.</p> <p>14 Q. So somebody told you that?</p> <p>15 A. Right.</p> <p>16 Q. So you're getting information from somebody to fill in</p> <p>17 for your report?</p> <p>18 A. Correct. This is when I got back from doing my tour</p> <p>19 around the building. I came back to the office and</p> <p>20 someone had said that, yeah.</p> <p>21 Q. So you're getting a story from somebody else as to</p> <p>22 what happened to fill in your report?</p> <p>23 A. Correct.</p> <p>24 Q. Did Knauf tell you that Dunigan wanted to go to jail?</p> <p>25 A. Yup. He came into the office right when I got back to</p>

<p style="text-align: right;">Page 81</p> <p>1 the office and said that Dunigan said he wanted to go 2 to jail. 3 Q. In the third paragraph you write: Mr. Dunigan stated 4 he wanted PSO Nugent to take him to jail. 5 A. Correct. 6 Q. You heard that said? 7 A. Correct. 8 Q. You then heard Nugent say he was not going to take him 9 to jail and that he needed to leave the ER. 10 Is that correct? 11 MR. O'LOUGHLIN: You said Nugent. 12 MR. HARRINGTON: PSO Nugent said he was not 13 going to take him to jail. 14 MR. O'LOUGHLIN: You said Nugent again, and 15 it says Knauf. 16 MR. HARRINGTON: No, PSO Nugent. This is 17 what the report says. I'm reading the report. 18 MR. O'LOUGHLIN: Oh, I thought you were 19 still in that paragraph where: I explained to 20 Mr. Dunigan that he was not going take him to jail. 21 MR. HARRINGTON: No-no-no. I'm on the 22 third full paragraph. 23 MR. O'LOUGHLIN: All right. 24 BY MR. HARRINGTON: 25 Q. PSO Nugent said he was not going take him to jail and</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. Who told you that, again, do you know? 2 A. I think it was Zack, if I remember right. 3 Q. Because then you write: Prior to this, it should be 4 noted that the entire time Mr. Dunigan was in the ER 5 he was moving about without assistance and switching 6 chairs. 7 A. Correct. 8 Q. You would agree with me, walking with a walker is 9 walking with assistance? 10 A. He was walking with a cane, not a walker. 11 Q. I apologize, walking with a cane is walking with 12 assistance? 13 MR. O'LOUGHLIN: Form and foundation. 14 BY MR. HARRINGTON: 15 Q. Yes? 16 A. Sure. 17 Q. You'd agree with me that using the chairs in the ER 18 waiting area east as a support while trying to walk is 19 walking with assistance? 20 MR. O'LOUGHLIN: Form and foundation. 21 BY MR. HARRINGTON: 22 Q. Go ahead. 23 A. I don't remember saying that he was using the chairs. 24 I mean -- 25 Q. No. You wrote: Walking, moving about without</p>
<p style="text-align: right;">Page 82</p> <p>1 that he needed to leave the ER. 2 Do you see that? 3 A. Yes. 4 Q. You heard that? 5 A. Yes. 6 Q. You then write: Mr. Dunigan was given a few moments 7 to gather his things. 8 What things did he have? 9 A. If I recall, he had a bag. It's just, I don't know 10 what -- I didn't look in the bag. I don't know what's 11 in it. Just items. 12 Q. Did he have a walker or a cane? 13 A. I believe, if I remember, he had a cane. 14 Q. Do you know where he got the cane from? 15 A. I have no idea. 16 Q. When Dunigan stood up, you did see him collapse 17 forward? 18 A. Yes. 19 Q. And you believed he was faking? 20 A. Yes. 21 Q. Why? 22 A. I guess just by the way he was acting after making the 23 statement, "Take me to jail," and the fact that I was 24 told that he had been moving around for the last 25 couple of hours in the ER, he was ambulatory.</p>	<p style="text-align: right;">Page 84</p> <p>1 assistance. 2 You wrote that, correct? 3 A. Right. He was moving about without assistance and 4 switching chairs. 5 Q. Right. And if he was switching chairs by putting, 6 say, his hands on the chairs, helping guide himself 7 into those chairs, you would agree with me that that 8 would be moving with assistance? 9 MR. O'LOUGHLIN: Form and foundation. 10 BY MR. HARRINGTON: 11 Q. Correct? 12 A. If he was putting his hands on the chair, sure. 13 Q. Why was it decided to get a wheelchair to escort 14 Mr. Dunigan out of the ER? 15 A. Because he was refusing to walk, and instead of 16 hurting our backs trying to lift the gentleman, we put 17 him in a wheelchair. 18 Q. He went into the wheelchair without any problems, 19 correct? 20 A. Correct. 21 Q. I mean, it's not like he had to use any type of -- 22 A. No, no. 23 Q. Let me ask my question. 24 A. Sorry. 25 Q. You didn't have to use any type of pressure point</p>

<p style="text-align: right;">Page 85</p> <p>1 control tactic to put him into a wheelchair, correct?</p> <p>2 A. No.</p> <p>3 Q. He willingly sat into it?</p> <p>4 A. Correct.</p> <p>5 Q. Didn't fight you at all?</p> <p>6 A. When he first stood there, he kind of pulled away a</p> <p>7 little bit, but, no, he sat in the wheelchair.</p> <p>8 Q. Then you write -- and this is in the fourth paragraph.</p> <p>9 After you write "and placed him into the wheelchair,"</p> <p>10 you wrote, "he refused to help."</p> <p>11 What do you mean by that?</p> <p>12 A. Refused to like help us assist him, like he was just</p> <p>13 like dead weight, refusing to walk or -- he was</p> <p>14 refusing to walk, so we put him in a wheelchair.</p> <p>15 Q. That's what you mean by "refused to help"?</p> <p>16 A. Yeah, help us help him.</p> <p>17 Q. The last sentence of paragraph 4, you write: At no</p> <p>18 time during this ordeal did Mr. Dunigan ask for help</p> <p>19 or ask to be seen in ER again nor make it known of any</p> <p>20 discomfort or pain.</p> <p>21 A. That's correct.</p> <p>22 Q. That's a statement you wrote?</p> <p>23 A. Yes.</p> <p>24 Q. And you wrote that when?</p> <p>25 A. When I wrote this report.</p>	<p style="text-align: right;">Page 87</p> <p>1 A. Not that I recall, no.</p> <p>2 Q. When he gets out of the wheelchair, he was able to</p> <p>3 walk a few paces?</p> <p>4 A. Correct.</p> <p>5 Q. So he -- the next statement, you write: He asked</p> <p>6 where the nearest bus stop was, and we instructed him</p> <p>7 that one was right by the ER parking lot.</p> <p>8 Do you remember that?</p> <p>9 A. Correct.</p> <p>10 Q. Who told him that?</p> <p>11 A. I believe Art said there was one over by the ER</p> <p>12 parking lot to the west. It would be Upjohn Street.</p> <p>13 Q. And how far was that from where he was at this point</p> <p>14 in time, a block or so?</p> <p>15 A. It's not a block. I don't know the exact distance.</p> <p>16 It's right at the end of the parking lot.</p> <p>17 Q. And did somebody point him to where it was?</p> <p>18 A. Yeah, I pointed, "It's over there."</p> <p>19 Q. And did he start to take the steps after you pointed</p> <p>20 in that direction?</p> <p>21 A. Yes.</p> <p>22 Q. And after he started taking the steps after you</p> <p>23 pointed him to where the bus stop was is when he fell</p> <p>24 to his knees again?</p> <p>25 A. Correct.</p>
<p style="text-align: right;">Page 86</p> <p>1 Q. Did you ask him if he wanted to be seen again?</p> <p>2 A. I did not, no.</p> <p>3 Q. Did anybody ask him, that you could tell, if he needed</p> <p>4 to be seen again in the ER?</p> <p>5 A. Not that I recall. The only thing I heard him say</p> <p>6 was, "Take me to jail."</p> <p>7 Q. But you didn't hear any officer say, including</p> <p>8 yourself, "Mr. Dunigan, do you want to be seen by</p> <p>9 anybody again in the ER?"</p> <p>10 A. No.</p> <p>11 Q. Nobody said that?</p> <p>12 A. No.</p> <p>13 Q. That's a true statement?</p> <p>14 A. That's true. And that was because he was discharged</p> <p>15 already. He had been seen in ER and discharged.</p> <p>16 Q. Next paragraph, when it says, "We were able to get</p> <p>17 Mr. Dunigan to stand up and walk a few paces," that</p> <p>18 took place outside of the hospital, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And you've seen the video of him outside of the</p> <p>21 hospital, right --</p> <p>22 A. I have --</p> <p>23 Q. -- recently?</p> <p>24 A. No.</p> <p>25 Q. Ever?</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. So it appears as though he was trying to walk to the</p> <p>2 bus stop?</p> <p>3 A. Correct.</p> <p>4 MR. O'LOUGHLIN: Form and foundation.</p> <p>5 BY MR. HARRINGTON:</p> <p>6 Q. Did anybody assist you with writing this statement?</p> <p>7 A. No.</p> <p>8 Q. When did Officer Nugent run Mr. Dunigan for warrants?</p> <p>9 A. Oh, right after -- when we directed Mr. Dunigan to the</p> <p>10 bus stop and then he became unambulatory and said, you</p> <p>11 know -- the only thing he would say to us was, "Take</p> <p>12 me to jail." At that point, Nugent went to his</p> <p>13 vehicle that was parked there off to the side of the</p> <p>14 turnaround and apparently ran Mr. Dunigan through</p> <p>15 whatever -- I don't know whatever system they use. I</p> <p>16 don't know what they use to run people.</p> <p>17 Q. So the warrant search was done through the Kalamazoo</p> <p>18 vehicle?</p> <p>19 A. Yes. The vehicle that he had parked, he went and</p> <p>20 used, I believe, the MDT, mobile data terminal, is</p> <p>21 what they call it, the computer in the car. I don't</p> <p>22 know whether -- he went to the car to do a check.</p> <p>23 Whether he called dispatch or whether he used -- I</p> <p>24 don't know.</p> <p>25 Q. Fair enough. Dunigan was ultimately handcuffed at one</p>

<p style="text-align: right;">Page 89</p> <p>1 point in time, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Who handcuffed him?</p> <p>4 A. Officer Nugent.</p> <p>5 Q. Whose handcuffs were used?</p> <p>6 A. Officer Nugent's.</p> <p>7 Q. Was the handcuffing done prior to or after the warrant</p> <p>8 run?</p> <p>9 A. After the warrant run.</p> <p>10 Q. How well do you know Officer Nugent?</p> <p>11 A. That was the first time I've met him. I mean, as far</p> <p>12 as -- he's pretty brand-new to the hospital, so ...</p> <p>13 Q. What does "BSO" stand for?</p> <p>14 A. Bronson Security Officer.</p> <p>15 Q. When he's asking, "Just take me to jail," is there</p> <p>16 anything that's going through your mind as to why this</p> <p>17 individual would rather go to jail than be at the</p> <p>18 hospital?</p> <p>19 A. I just thought it was strange, I mean -- but, you</p> <p>20 know, sometimes, unfortunately, a lot of our homeless</p> <p>21 people that we have have mental issues, so I don't</p> <p>22 know. I can't answer to the fact that what, you know,</p> <p>23 why he was saying, "Take me to jail." I don't know</p> <p>24 his state of mind other than, you know, that's what he</p> <p>25 kept saying.</p>	<p style="text-align: right;">Page 91</p> <p>1 Q. Is there anything else significant about your</p> <p>2 interactions with Mr. Dunigan that occurred that we</p> <p>3 haven't addressed?</p> <p>4 MR. O'LOUGHLIN: Form.</p> <p>5 A. No, not that I recall.</p> <p>6 MR. HARRINGTON: Counsel, do we have</p> <p>7 Exhibit 7 somewhere? Do you have it, by any chance?</p> <p>8 MR. O'LOUGHLIN: What was it?</p> <p>9 MR. HARRINGTON: I found it.</p> <p>10 BY MR. HARRINGTON:</p> <p>11 Q. I'm going to show you Exhibit 13 that we marked during</p> <p>12 Nolan's deposition.</p> <p>13 A. Okay.</p> <p>14 Q. Do you see that? Do you see it?</p> <p>15 A. Yes.</p> <p>16 Q. Do you see the names that are associated with the</p> <p>17 various individuals?</p> <p>18 A. Yes.</p> <p>19 Q. Do you agree that those are the appropriate names?</p> <p>20 A. Yes.</p> <p>21 Q. Meaning, do the names correspond --</p> <p>22 A. Yes.</p> <p>23 Q. -- with who's depicted in the picture?</p> <p>24 In Exhibit 14, we see Officer Nugent,</p> <p>25 yourself, and who else?</p>
<p style="text-align: right;">Page 90</p> <p>1 Sometimes we've had homeless people, when</p> <p>2 we evict them, if they can't stay at the hospital,</p> <p>3 they'll go to jail. They'll want to go to jail</p> <p>4 because, you know, it's a place to sleep, or whatever,</p> <p>5 a roof over their head.</p> <p>6 Q. It's also a place to get medical treatment.</p> <p>7 A. I have no idea. I don't know what they do at the</p> <p>8 jail. I don't know, I can't answer that question.</p> <p>9 Q. I mean, if somebody's brought to jail and they're</p> <p>10 suffering from a serious medical condition, they are</p> <p>11 given -- or the constitution requires that they get</p> <p>12 medical treatment.</p> <p>13 Do you know that, or no?</p> <p>14 A. No, I can't answer what the jail does. I don't, I</p> <p>15 don't have no idea what the jail does. I just assumed</p> <p>16 they'd send him back to the hospital.</p> <p>17 Q. Have you ever seen that in your practice as a security</p> <p>18 officer?</p> <p>19 A. As far as people brought from the jail? Yes.</p> <p>20 Q. Would you ever see people who come to the hospital,</p> <p>21 get treatment, and then are taken to jail and then</p> <p>22 immediately brought back to jail [sic]?</p> <p>23 A. Yes.</p> <p>24 Q. How often did that happen in your time as an officer?</p> <p>25 A. That I witnessed? Not -- a couple times.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. That would be Zack.</p> <p>2 Q. And in Exhibit 16 we see Mr. Dunigan, but who else do</p> <p>3 we see with him, if you know?</p> <p>4 A. Those are Life paramedics.</p> <p>5 Q. Do you know who they are?</p> <p>6 A. No.</p> <p>7 Q. After you had learned of the passing of Mr. Dunigan,</p> <p>8 what did you do, if anything?</p> <p>9 MR. O'LOUGHLIN: Form and foundation.</p> <p>10 A. As far as what did I do in reference to?</p> <p>11 BY MR. HARRINGTON:</p> <p>12 Q. I mean, anything. Did you do any type of</p> <p>13 investigation? Did you do any type of looking at --</p> <p>14 A. I watched the video on the news, parts of the video.</p> <p>15 I didn't watch the whole thing. That was it, so ...</p> <p>16 Q. What was going through your mind when you saw that?</p> <p>17 A. As far as the video?</p> <p>18 MR. O'LOUGHLIN: Form and foundation.</p> <p>19 BY MR. HARRINGTON:</p> <p>20 Q. I'm sorry?</p> <p>21 A. I thought it was a horrible situation.</p> <p>22 Q. Anything else?</p> <p>23 A. I mean, you know, it was horrible that he died.</p> <p>24 Q. Do you have any knowledge as to what his cause of</p> <p>25 death was?</p>

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1 A. No.

2 Q. Have you since talked to any of the medical

3 professionals that were involved in any of his care or

4 treatment prior to discharge?

5 A. No.

6 Q. Sir, I don't think I have any more questions for you.

7 Thank you for your time.

8 A. Thanks, appreciate it.

9 MR. O'LOUGHLIN: I will reserve my

10 questions for this witness for the time of trial.

11 (The deposition was concluded at 4:28 p.m.

12 Signature of the witness was not requested by

13 counsel for the respective parties hereto.)

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1 CERTIFICATE OF NOTARY

2 STATE OF MICHIGAN)

3) SS

4 COUNTY OF KENT)

5

6 I, REBECCA L. RUSSO, certify that this

7 deposition was taken before me on the date

8 hereinbefore set forth; that the foregoing questions

9 and answers were recorded by me stenographically and

10 reduced to computer transcription; that this is a

11 true, full and correct transcript of my stenographic

12 notes so taken; and that I am not related to, nor of

13 counsel to, either party nor interested in the event

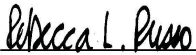
14 of this cause.

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22 REBECCA L. RUSSO, CSR-2759

23 Notary Public,

24 Kent County, Michigan.

25 My Commission expires: 6-3-2023

Exhibit 4

In the Matter Of:

DUNIGAN vs BRONSON METHODIST HOSPITAL, ET AL.

ROBERT STARK, M.D.

March 02, 2018

Prepared for you by



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw • Troy

STARK, M.D., ROBERT
03/02/2018

Pages 1–4

<p style="text-align: right;">Page 1</p> <p>1 IN THE DISTRICT COURT OF THE UNITED STATES</p> <p>2 FOR THE EASTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 GORDA DUNIGAN, as Personal</p> <p>6 Representative for the ESTATE</p> <p>7 OF JAMES DUNIGAN, Deceased,</p> <p>8 Plaintiff,</p> <p>9 vs. Case No. 1:16-CV</p> <p>10 Hon. Ellen S. Carmody</p> <p>11 BRONSON METHODIST HOSPITAL,</p> <p>12 Defendant.</p> <p>13</p> <p>14 GORDA DUNIGAN, as Personal</p> <p>15 Representative of the ESTATE</p> <p>16 OF JAMES DUNIGAN,</p> <p>17 Plaintiff,</p> <p>18 vs. Case No. 1:15-CV-01325</p> <p>19 Hon. Ellen S. Carmody</p> <p>20 DEREK NUGENT, et al,</p> <p>21 Defendant.</p> <p>22 /</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 JOHN C. O'LOUGHLIN (Video Conference)</p> <p>2 Smith, Haughey, Rice, Roegge, P.C.</p> <p>3 100 Monroe Center Street NW</p> <p>4 Grand Rapids, Michigan 49503</p> <p>5 616.458.9370</p> <p>6 joloughlin@shrr.com</p> <p>7 Appearing on behalf of the Defendant</p> <p>8 Bronson Methodist.</p> <p>9</p> <p>10 ALLAN C. VANDER LAAN (Video Conference)</p> <p>11 Cummings, McClorey, Davis & Acho, PLC</p> <p>12 2851 Charlevoix Drive SE</p> <p>13 Suite 327</p> <p>14 Grand Rapids, Michigan 49546</p> <p>15 616.975.7470</p> <p>16 avanderlaan@cnda-law.com</p> <p>17 Appearing on behalf of the Defendant</p> <p>18 Derek Nugent.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 The Deposition of ROBERT STARK, M.D.,</p> <p>2 Taken at 30800 Telegraph Road, Suite 2925,</p> <p>3 Bingham Farms, Michigan,</p> <p>4 Commencing at 12:09 p.m.,</p> <p>5 Friday, March 2, 2018,</p> <p>6 Before Sabrina Smith, CSR-2129.</p> <p>7 APPEARANCES:</p> <p>8</p> <p>9 JAMES HARRINGTON</p> <p>10 Fieger, Fieger, Kenney & Harrington, P.C.</p> <p>11 19390 West Ten Mile Road</p> <p>12 Southfield, Michigan 48075</p> <p>13 248.355.5555</p> <p>14 j.harrington@fiegerlaw.com</p> <p>15 Appearing on behalf of the Plaintiff.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 TABLE OF CONTENTS</p> <p>2</p> <p>3 WITNESS PAGE</p> <p>4 ROBERT STARK, M.D.</p> <p>5</p> <p>6 EXAMINATION</p> <p>7 BY MR. O'LOUGHLIN: 5</p> <p>8 EXAMINATION</p> <p>9 BY MR. VANDER LAAN: 59</p> <p>10 EXAMINATION</p> <p>11 BY MR. HARRINGTON: 70</p> <p>12 RE-EXAMINATION</p> <p>13 BY MR. O'LOUGHLIN: 72</p> <p>14</p> <p>15 EXHIBIT</p> <p>16</p> <p>17 EXHIBIT PAGE</p> <p>18 (Exhibit attached to transcript.)</p> <p>19</p> <p>20 DEPOSITION EXHIBIT 1 82</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 5</p> <p>1 Bingham Farms, Michigan 2 Friday, March 2, 2018 3 12:09 p.m. 4 5 ROBERT STARK, M.D., 6 was thereupon called as a witness herein, and after 7 having first been duly sworn to testify to the truth, 8 the whole truth and nothing but the truth, was 9 examined and testified as follows: 10 MR. O'LOUGHLIN: The record should reflect 11 that this is the deposition of Dr. Robert Stark being 12 taken by video conference, and for all purposes under 13 the Federal Rules of Civil Procedure and Federal Rules 14 of Evidence. 15 EXAMINATION 16 BY MR. O'LOUGHLIN: 17 Q. Would you please state your full name? 18 A. Robert M. Stark, M.D. 19 Q. Dr. Stark, I understand you're actually from 20 Connecticut but you were kind enough to come to 21 Michigan today. 22 A. Yes. 23 Q. What was the purpose of your trip to Michigan other 24 than this deposition? 25 A. I'm from Michigan and visiting my family.</p>	<p style="text-align: right;">Page 7</p> <p>1 representing the plaintiff as opposed to an attorney 2 representing a defendant? 3 A. Yes. About two-thirds for the plaintiff and about 4 one-third for defense. 5 Q. Of those cases, can you break them down as to the type 6 of case, or tell me how many of them were medical 7 malpractice cases? 8 A. I would say 90 percent medical malpractice and 9 10 percent other things, but medical or scientifically 10 related. 11 Q. I have your date of birth as 3-5-48, so you're about 12 to turn 70? 13 A. Yes, that's right. 14 Q. Congratulations on that. Are you still in the active 15 practice of medicine? 16 A. Yes, I am. 17 Q. Could you describe your current practice? 18 A. I'm seeing patients in the office four days a week 19 full time, and about 30 percent of my practice is 20 hospital-based, 70 percent is office-based. It's 21 mostly cardiology with some internal medicine. 22 Q. And we're taking your deposition because you've been 23 identified as an expert on behalf of the plaintiff in 24 this case, the Dunigan estate. 25 And I have a report from you, but I'm</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. Well, good. Welcome home. 2 A. Thank you. 3 Q. And we do pay you for your deposition, but you're not 4 charging us any travel time or transportation costs? 5 A. None. That's correct. 6 Q. And you met with Mr. Harrington before we started 7 today? 8 A. Yes. 9 Q. Are you currently involved in any other cases for the 10 Fieger firm? 11 A. No. 12 Q. Have you been involved in cases with the Fieger firm 13 in the past? 14 A. Yes, I have. 15 Q. On how many occasions? 16 A. Boy, over 15 years, I would, 30 cases approximately. 17 Q. And those questions were just asked to the Fieger 18 firm. What if we expand that to cases you have 19 reviewed, medical legal cases from any source, how 20 many would that be? 21 A. In my total career? 22 Q. Yes. 23 A. Over, over 30 years, I would estimate 250 cases. 24 Q. And is there -- can you split that for me between 25 cases in which you were contacted by the attorney</p>	<p style="text-align: right;">Page 8</p> <p>1 wondering, are you aware of any care of Mr. Dunigan on 2 May 6, 2016 by an internist or a cardiologist? 3 A. No. 4 Q. I am correct that you are not an emergency medicine 5 physician? 6 A. I am not. 7 Q. And in 2016 you were not practicing as an emergency 8 medicine physician? 9 A. No. 10 Q. And you aren't Board certified in emergency medicine? 11 A. No, I'm not. 12 Q. You are not a nurse? 13 A. No. 14 Q. Do you have any experience or education as a nurse? 15 A. No. 16 Q. Do you have any experience or education or training as 17 a law enforcement officer? 18 A. No. 19 Q. Do you have any education, training or experience as a 20 hospital security officer? 21 A. No. 22 Q. Of those cases that you've reviewed, medical legal 23 cases that you've reviewed over the course of your 24 career, were any of them involving claims of EMTALA 25 violations?</p>

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Pages 9–12

<p style="text-align: right;">Page 9</p> <p>1 A. Yes, I believe one was.</p> <p>2 Q. Can you recall the circumstances of, or the facts of</p> <p>3 that case?</p> <p>4 A. I can't.</p> <p>5 Q. Was the defendant a hospital?</p> <p>6 A. Yes.</p> <p>7 Q. Was it a hospital in Michigan?</p> <p>8 A. I don't recall.</p> <p>9 Q. Have you brought with you today everything you have</p> <p>10 reviewed related to this case?</p> <p>11 A. I haven't, only my notes and selected, selected</p> <p>12 records and depositions.</p> <p>13 Q. Can you tell me when you were first contacted</p> <p>14 regarding this case?</p> <p>15 A. It was in the summer of 2017.</p> <p>16 Q. And how were you contacted?</p> <p>17 A. A phone call either from Attorney Harrington or his</p> <p>18 assistant, Devin Berry.</p> <p>19 Q. And were you told something about the case at this</p> <p>20 time?</p> <p>21 A. The briefest, the briefest description and was asked</p> <p>22 if I had time to review it.</p> <p>23 Q. And what did you understand your task to be as a</p> <p>24 reviewer?</p> <p>25 A. My understanding at that time was to review the</p>	<p style="text-align: right;">Page 11</p> <p>1 deposition of Deputy Nola Cattell, and I think that's</p> <p>2 all that I got initially.</p> <p>3 Q. Did you review that material?</p> <p>4 A. Yes, I did.</p> <p>5 Q. In its entirety?</p> <p>6 A. Yes, I did.</p> <p>7 Q. Including the videos from the Bronson surveillance and</p> <p>8 the police car?</p> <p>9 A. Yes, I did.</p> <p>10 Q. And you reviewed those in their entirety?</p> <p>11 A. Yes.</p> <p>12 Q. Did you review those at regular speed or did you fast</p> <p>13 forward any portion?</p> <p>14 A. No, at regular speed, and I took notes on them.</p> <p>15 Q. I want to go back to what you described as a narrative</p> <p>16 from Bronson, which you described as a 3 to 4 page</p> <p>17 document.</p> <p>18 A. It was --</p> <p>19 Q. I'm sorry, go ahead.</p> <p>20 A. No, it was a 34 page document.</p> <p>21 Q. And that's not referring, that's not medical records</p> <p>22 or is it medical records?</p> <p>23 A. No, it was not medical records. It was compiled after</p> <p>24 this incident by administration at Bronson Methodist.</p> <p>25 MR. O'LOUGHLIN: Jim, can you help me out?</p>
<p style="text-align: right;">Page 10</p> <p>1 medical care and to comment on appropriateness.</p> <p>2 Q. Can you identify what you received and reviewed up to</p> <p>3 the time of the report you prepared in this case,</p> <p>4 which is dated October 24, 2017?</p> <p>5 A. Okay. I got medical records from the Bronson</p> <p>6 Methodist Hospital, a narrative from the Bronson</p> <p>7 Memorial Hospital.</p> <p>8 Q. I was going to wait and go back over it, but what'd</p> <p>9 you mean by a narrative?</p> <p>10 A. It was like a 34 page document authored by people at</p> <p>11 Bronson Memorial who were investigating this</p> <p>12 particular episode.</p> <p>13 Q. Did that narrative have a name or author indicated on</p> <p>14 it?</p> <p>15 A. No. Also, a similar narrative from the Kalamazoo</p> <p>16 Police Department on this episode, a Western --</p> <p>17 Q. What else, go ahead?</p> <p>18 A. Western Michigan University postmortem report, and a</p> <p>19 Kalamazoo Police Department incident and investigation</p> <p>20 report. I think I already mentioned that. An</p> <p>21 affidavit for what looks like a search warrant, two CD</p> <p>22 discs from Bronson, surveillance footage it was</p> <p>23 called, and one called Dunigan Police Vehicle Footage,</p> <p>24 a deposition of a Charles Shoemaker and deposition</p> <p>25 from Public Safety Officer Ernie Knauf, deposition,</p>	<p style="text-align: right;">Page 12</p> <p>1 Is that something that we produced or --</p> <p>2 MR. HARRINGTON: Well, there were, I think</p> <p>3 there were some records, Counsel, that I, you know how</p> <p>4 the records that I have are, you know the different</p> <p>5 pagination that you have. Maybe that's what he's</p> <p>6 referring to.</p> <p>7 MR. O'LOUGHLIN: He's saying it's a 34 page</p> <p>8 document that is not the records. It is a narrative</p> <p>9 from Bronson. Do you think he's referring to the</p> <p>10 medical record? And I'm not here to question you.</p> <p>11 BY MR. O'LOUGHLIN:</p> <p>12 Q. Do you have this document with you, Doctor?</p> <p>13 A. No, I don't have this document.</p> <p>14 MR. HARRINGTON: Let me see if this -- hang</p> <p>15 on one second.</p> <p>16 Doctor, take a look at the documents I've</p> <p>17 handed you and tell me if that's what you're referring</p> <p>18 to. It may or may not be. I don't know.</p> <p>19 THE WITNESS: What you've handed me is from</p> <p>20 the Kalamazoo Police Department. That's separate from</p> <p>21 the Bronson document. And here's the affidavit for</p> <p>22 search warrant that I mentioned. That was part of the</p> <p>23 police records.</p> <p>24 MR. HARRINGTON: Counsel, I'm not sure what</p> <p>25 he's referring to because I don't have a 34 page --</p>

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Pages 13–16

<p style="text-align: right;">Page 13</p> <p>1 THE WITNESS: This, I'm sorry, this does 2 say that it's only 34 pages long, so this must be it. 3 MR. HARRINGTON: Yes, that's what I was 4 thinking, because it's the -- I handed him the 5 Kalamazoo police records. Those are 34 pages. 6 THE WITNESS: I'm sorry. This has to be 7 it, the Police Accident Incident Investigation. 8 BY MR. O'LOUGHLIN: 9 Q. Okay. And that's fine. I just wanted to clear that 10 up because I wasn't aware of any investigative 11 narrative from Bronson. 12 Did you review the medical records from 13 Bronson? 14 A. Oh, yes, yes. 15 Q. From the Emergency Department visit? 16 A. Yes. 17 Q. Did you review any other medical records -- well, you 18 mentioned the autopsy. Did you review any other 19 medical records of Mr. Dunigan? 20 A. Just toxicology report that went along with the 21 autopsy, but no other medical records. 22 Q. Have we, and have we now listed everything that you've 23 reviewed up to the time you prepared your report? 24 A. Yes. 25 Q. Have you reviewed additional information since your</p>	<p style="text-align: right;">Page 15</p> <p>1 after the preparation of your report? 2 A. Yes, yes, we have. 3 Q. Have you done any sort of research or online search of 4 any kind relating to any of the issues in this case? 5 A. No, I haven't. 6 Q. Have you reviewed sufficient information to provide us 7 with your opinions? 8 A. Yes. 9 Q. Have you asked for any additional information? 10 A. No, I have not. 11 Q. Did any of the material you reviewed after your report 12 change your opinions? 13 A. No. 14 Q. Are your opinions fairly set forth in your report? 15 A. A couple of opinions are missing from my report. 16 Q. Okay. We'll cover the opinions. 17 Aside from those missing opinions, is there 18 anything else that needs to be added to or corrected 19 in your report? 20 A. There's, yes, there is an error on the final page of 21 my report. 22 Q. What are you referring to? 23 A. In the top paragraph on Page 2 of my report, the last 24 sentence is all jumbled up and it should read "In the 25 case of Mr. Dunigan, this delay in receiving needed</p>
<p style="text-align: right;">Page 14</p> <p>1 report? 2 A. Yes, I have. 3 Q. What additional information have you reviewed? 4 A. Deposition of Dr. Wesley Rigot, an expert report from 5 John Kendall, and one from Randall Commissaris. An 6 expert report from Robert -- I can't read it but it's 7 S-h, Sherwin, an ER doctor at Sinai Grace; from Daniel 8 Richardson, M.D.; and an expert report from 9 Ernst von Schwartz. And I may have mentioned this 10 already, Deputy Nola Cattell, a deposition. 11 Q. I think you did mention Mr. Cattell's deposition. 12 A. Okay, then that was from before, but those are all the 13 things that I reviewed. 14 Q. And just to avoid confusion, you've referred to 15 Mr. Cattell as deputy. I don't believe he's a law 16 enforcement officer. I believe he was one of the 17 security officers at Bronson. 18 A. Oh, yes, yes. 19 Q. Does that appear to be correct? 20 A. Yes, it is. 21 Q. And anything else you've reviewed since preparing your 22 report? 23 A. No, nothing else. 24 Q. Have we now identified everything you've reviewed 25 related to this case at any time, either before or</p>	<p style="text-align: right;">Page 16</p> <p>1 healthcare, was a substantial causative factor in his 2 death on May 6, 2012." 3 Q. Okay. I was unable to locate the area you were 4 talking about. I have a 3 page report from you dated 5 October 24, 2017. 6 A. That explains it. I just have a rough draft here, and 7 I'm sure this was corrected in the 3 page final 8 report. 9 MR. O'LOUGHLIN: Counsel, do you have -- 10 BY MR. O'LOUGHLIN: 11 Q. Do you not have a copy of your report, Dr. Stark? 12 A. I only have a rough draft here. 13 MR. HARRINGTON: Give me one second, Jack. 14 MR. O'LOUGHLIN: Sure. 15 MR. HARRINGTON: Doctor -- 16 THE WITNESS: Yes, this 3 page report is 17 correct. 18 BY MR. O'LOUGHLIN: 19 Q. And does it include the opinions you were referring to 20 earlier, the additional opinions that you were going 21 to add? 22 A. No, it's missing that sentence that I just read. It 23 needs one sentence to be added. 24 Q. And just so I don't forget, why don't you go ahead and 25 tell me again what that sentence you would add to that</p>

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<p style="text-align: right;">Page 17</p> <p>1 report and where you would put it in.</p> <p>2 A. It goes on Page 3 at the end of the second to the</p> <p>3 final paragraph. It should read "In the case of</p> <p>4 Mr. Dunigan, this avoidable delay in receiving needed</p> <p>5 healthcare, was a substantial causative factor in his</p> <p>6 death on 5-6-16."</p> <p>7 Q. Before today and just now, when is the last time you</p> <p>8 read that report, the typed report that was provided</p> <p>9 to counsel?</p> <p>10 A. Last night was the last time I read it.</p> <p>11 Q. And you read it in the format that you're looking at</p> <p>12 now, the typed version?</p> <p>13 A. Yes, and I added in my handwriting the missing</p> <p>14 sentence.</p> <p>15 Q. Okay. Any other additions or corrections to that</p> <p>16 report that need to be made?</p> <p>17 A. The addition would be those two opinions that I said</p> <p>18 weren't reflected in this report.</p> <p>19 Q. Okay. Once again, so I don't forget, why don't you go</p> <p>20 ahead and tell me what those are.</p> <p>21 A. The two things that should have been included were</p> <p>22 that Dr. Rigot, on May 6th, 2016, didn't query the</p> <p>23 patient when he had last taken his insulin. He didn't</p> <p>24 ask the patient when he had last eaten. He didn't ask</p> <p>25 him to ambulate or watch him ambulate, and he didn't</p>	<p style="text-align: right;">Page 19</p> <p>1 fall?</p> <p>2 A. No, I don't.</p> <p>3 Q. Did you, in looking at the video, observe him using a</p> <p>4 cane?</p> <p>5 A. I don't recall, but I did see him stumble and</p> <p>6 partially collapse.</p> <p>7 Q. Did you, in reviewing the noted medical history, see</p> <p>8 that he had a history of hemiplegia due to a CVA or</p> <p>9 cerebral vascular accident?</p> <p>10 A. I saw that, yes.</p> <p>11 Q. Do you know how well Mr. Dunigan was able to ambulate</p> <p>12 before the fall?</p> <p>13 A. I don't.</p> <p>14 Q. Do you know the clinical signs and symptoms of</p> <p>15 hyperkalemia?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Can you list those for me?</p> <p>18 A. If it's primary hyperkalemia with a primary cause, it</p> <p>19 would be muscle weakness, thirst and cardiac</p> <p>20 arrhythmias if it's severe enough.</p> <p>21 Q. Any others come to mind?</p> <p>22 A. No.</p> <p>23 Q. Would you include fatigue?</p> <p>24 A. Yes, I would.</p> <p>25 Q. Would you include shortness of breath or difficulty</p>
<p style="text-align: right;">Page 18</p> <p>1 do what are called orthostatic blood pressure readings</p> <p>2 when his blood pressure was low. He didn't stand him</p> <p>3 up and recheck it.</p> <p>4 Q. Does that cover then one of the new opinions that you</p> <p>5 have?</p> <p>6 A. That's total the new opinions.</p> <p>7 Q. All right. And with that addition and the correction</p> <p>8 you made earlier, is the report, your report,</p> <p>9 otherwise accurate and correct and reflective of your</p> <p>10 opinions?</p> <p>11 A. Yes.</p> <p>12 Q. Based upon your review of all the material you've seen</p> <p>13 in this case?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know when Mr. Dunigan last took insulin before</p> <p>16 the Emergency Department visit?</p> <p>17 A. No, I don't.</p> <p>18 Q. Do you know when he had last eaten?</p> <p>19 A. No.</p> <p>20 Q. Do you know what his ambulatory status was up to the</p> <p>21 time he went to the Emergency Department or was taken</p> <p>22 to the Emergency Department by EMS?</p> <p>23 A. I know, I knew he had some limitation because he had</p> <p>24 fallen, but I don't know anything after that fall.</p> <p>25 Q. Do you know whether he had any limitations before the</p>	<p style="text-align: right;">Page 20</p> <p>1 breathing?</p> <p>2 A. Only, only if it's severe enough to involve a cardiac</p> <p>3 arrhythmia.</p> <p>4 Q. Would you include palpitations?</p> <p>5 A. Again, only if the hyperkalemia is bad enough that it</p> <p>6 would cause arrhythmia, that could cause palpitations.</p> <p>7 Q. Would you include numbness and tingling in the</p> <p>8 extremities?</p> <p>9 A. No.</p> <p>10 Q. Would you include nausea or vomiting?</p> <p>11 A. Possibly, yes.</p> <p>12 Q. Anything else that you would include as a clinical</p> <p>13 sign of hyperkalemia?</p> <p>14 A. No.</p> <p>15 Q. Do you know the signs and symptoms of congestive heart</p> <p>16 failure?</p> <p>17 A. Yes.</p> <p>18 Q. Could you list those for me, please?</p> <p>19 A. They could range from no shortness of breath to</p> <p>20 difficulty catching your breath even at rest, having</p> <p>21 orthopnea, which is shortness of breath even when</p> <p>22 lying flat. Rapid heart rate, blood pressure that's</p> <p>23 either too low or too high. And for signs, listening</p> <p>24 to the heart, hearing what's called a gallop, and the</p> <p>25 neck veins being more engorged than normal. Also on</p>

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<p style="text-align: right;">Page 21</p> <p>1 chest x-ray, which is an early finding, is congestion</p> <p>2 of the vessels in the lungs.</p> <p>3 Q. How about swelling or edema, would you include that?</p> <p>4 A. You can have swelling of the lower legs and ankles,</p> <p>5 but you don't necessarily have to have that because</p> <p>6 that involves failure of the right ventricle rather</p> <p>7 than the left which causes congestive heart failure.</p> <p>8 Q. Your report covers some of your background, and you</p> <p>9 include in there that you serve as an instructor for</p> <p>10 the American Heart Association's course in advanced</p> <p>11 cardiac life support, or ACLS, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Does that include training in resuscitation or what</p> <p>14 they might call in hospital, codes?</p> <p>15 A. Yes, that's exactly what it involves.</p> <p>16 Q. And are you familiar with the rates of success,</p> <p>17 meaning survival, immediate survival or survival to</p> <p>18 discharge of resuscitations after a witnessed cardiac</p> <p>19 arrest in a hospital?</p> <p>20 A. I am, yes.</p> <p>21 Q. What are the rates of success?</p> <p>22 A. If it's witnessed and, by that somebody sees the</p> <p>23 patient go down but the patient isn't necessarily on a</p> <p>24 cardiac monitor, those rates are in the 40s, in the</p> <p>25 40 percent range. If someone arrests in an emergency</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. It may have been part of the Bronson records that you</p> <p>2 received, but I don't know that.</p> <p>3 So do you know how EMS came to be called to</p> <p>4 see, or how they came to see Mr. Dunigan?</p> <p>5 A. I do.</p> <p>6 Q. How?</p> <p>7 A. He got dizzy and fell in getting off a bus, but he</p> <p>8 made it to home, but then the chest pain was so severe</p> <p>9 that he called EMS.</p> <p>10 Q. And he did that from his home?</p> <p>11 A. Yes, home.</p> <p>12 Q. And how long after the fall did he call EMS?</p> <p>13 A. I'm not aware.</p> <p>14 Q. Do you know whether, at the time EMS saw and</p> <p>15 transported Mr. Dunigan, he had any dizziness?</p> <p>16 A. At that time, I don't know.</p> <p>17 Q. What is it that you reviewed that allowed you to</p> <p>18 conclude that Mr. Dunigan fell because of dizziness?</p> <p>19 A. When he arrived at the emergency room, he told them</p> <p>20 that he had been dizzy, had a fall, and that he just</p> <p>21 didn't feel right and he had right-sided chest pain.</p> <p>22 Q. You're referring to the nurse's note that says</p> <p>23 "Dizziness, and then patient states 'lost my balance</p> <p>24 getting off the bus, I just didn't feel right.'"</p> <p>25 A. Yes, that's what I'm referring to.</p>
<p style="text-align: right;">Page 22</p> <p>1 room while he's on a cardiac monitor or in the</p> <p>2 telemetry unit while he's on a monitor, the speed with</p> <p>3 which response takes place can result in a 60 or</p> <p>4 65 percent rate of success.</p> <p>5 Q. What about on average the rate of success for arrest,</p> <p>6 even monitored arrests in the ED?</p> <p>7 A. Monitored arrests in the ED, 60 percent is the</p> <p>8 optimal. It's between 50 and 60 percent if it's in a</p> <p>9 facility where you have defibrillators.</p> <p>10 Q. And where did you obtain that information?</p> <p>11 A. From prior talks that I've had to give and looking at</p> <p>12 the literature for a prior case.</p> <p>13 Q. Are you familiar with literature which states a lower</p> <p>14 percentage of less than 50 percent for successful</p> <p>15 resuscitation of patients who have even a witnessed</p> <p>16 and monitored arrest?</p> <p>17 A. No.</p> <p>18 MR. HARRINGTON: Objection to form and</p> <p>19 foundation.</p> <p>20 BY MR. O'LOUGHLIN:</p> <p>21 Q. Did you review the EMS records for the run that</p> <p>22 brought Mr. Dunigan to the Emergency Department on</p> <p>23 May 6th, 2016?</p> <p>24 A. I, I don't recall, and I don't believe I did because</p> <p>25 it's not in my notes.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. Beyond that, are you aware of anything about the</p> <p>2 circumstances of the fall?</p> <p>3 A. No.</p> <p>4 Q. Did you understand from your review that when he fell,</p> <p>5 he landed on his right chest and flank?</p> <p>6 A. Yes.</p> <p>7 Q. And did you understand from your review, that that's</p> <p>8 what he reported as the cause and source of his right</p> <p>9 chest and flank pain?</p> <p>10 A. Yes, it was.</p> <p>11 Q. Are you aware of any indication of loss of</p> <p>12 consciousness?</p> <p>13 A. No.</p> <p>14 Q. Are you aware of any indication of syncope or near</p> <p>15 syncope?</p> <p>16 A. No. Although dizziness blends in with near syncope.</p> <p>17 The two can be one in the same, but he did not lose</p> <p>18 consciousness.</p> <p>19 Q. What is your understanding of Mr. Dunigan's medical</p> <p>20 history as of the time he went to the Emergency</p> <p>21 Department?</p> <p>22 A. He had a history of poorly-controlled hypertension.</p> <p>23 In fact, had what's called hypertensive crisis where</p> <p>24 the blood pressure is extremely high. He had chronic</p> <p>25 renal failure that required dialysis. He had diabetes</p>

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<p style="text-align: right;">Page 25</p> <p>1 that was insulin-dependent. He had recently had</p> <p>2 congestive heart failure and acute pulmonary edema,</p> <p>3 which is fluid in the lungs, and at one point had</p> <p>4 migraine headaches, a pulmonary embolus, which is a</p> <p>5 blood clot to the lung and -- just one second. And a</p> <p>6 stroke, cerebral vascular disease.</p> <p>7 Q. Did he have any clinical signs or symptoms of any of</p> <p>8 those conditions at the time he presented to the</p> <p>9 Emergency Department?</p> <p>10 A. He had tachycardia, unusually fast heart rate which</p> <p>11 can be consistent with either a cardiac problem or</p> <p>12 congestive heart failure or pulmonary embolus. He had</p> <p>13 chest pain, which could be related to the heart or</p> <p>14 related to getting injured on his right chest. He had</p> <p>15 abnormally low blood pressure, and this is very</p> <p>16 important, he had a blood pressure which was</p> <p>17 alarmingly low for a man who's known to have</p> <p>18 hypertension. Other clinical signs are his chest</p> <p>19 x-ray done for his ribs showed some fluid overload in</p> <p>20 his lungs. I think those were all.</p> <p>21 Q. The fast heart rate, the tachycardia of 113, do you</p> <p>22 know whether he had an elevated heart rate when seen</p> <p>23 by EMS, by the ambulance people?</p> <p>24 A. I don't know.</p> <p>25 Q. And in the hospital, was that, was his heart rate</p>	<p style="text-align: right;">Page 27</p> <p>1 also do an electrocardiogram and see if the heart</p> <p>2 waves look normal.</p> <p>3 Q. But as far as clinical examination or history taking,</p> <p>4 are there other ways to distinguish whether the pain</p> <p>5 is from trauma or from a cardiac origin?</p> <p>6 A. Besides the maneuver of pressing on the chest wall,</p> <p>7 having the patient take a very deep breath, and if</p> <p>8 that causes more pain, that's usually not from the</p> <p>9 heart and is from the trauma.</p> <p>10 Q. Is that also referred to as being reproducible?</p> <p>11 A. Yes.</p> <p>12 Q. And was Mr. Dunigan's chest pain or flank pain that he</p> <p>13 complained of reproducible?</p> <p>14 A. Yes, it was.</p> <p>15 Q. So would you agree that his reference to chest pain</p> <p>16 was not the type of chest pain that would be</p> <p>17 indicative of a cardiac condition?</p> <p>18 MR. HARRINGTON: I'm going to object to</p> <p>19 form and foundation.</p> <p>20 THE WITNESS: Not having done the requisite</p> <p>21 electrocardiogram, the doctor couldn't conclusively</p> <p>22 say the chest pain is from the trauma, but it looks</p> <p>23 like that from the exam that he did do.</p> <p>24 BY MR. O'LOUGHLIN:</p> <p>25 Q. Are you able to offer an opinion as to what an EKG</p>
<p style="text-align: right;">Page 26</p> <p>1 rechecked and, upon recheck, was down to 90?</p> <p>2 A. I don't know the answer to that. I don't recall.</p> <p>3 Q. Would that be significant to your opinions?</p> <p>4 A. That, yes, it would be significant.</p> <p>5 Q. How so?</p> <p>6 A. Less of a sign of cardiopulmonary distress if the</p> <p>7 heart rate goes down to 90.</p> <p>8 Q. Have you heard of a phenomenon, colloquially referred</p> <p>9 to as white coat syndrome?</p> <p>10 A. Sure, yes.</p> <p>11 Q. What is that?</p> <p>12 A. It's an elevation of the blood pressure due to the</p> <p>13 patient's apprehension usually for, you know,</p> <p>14 physicians in white coats.</p> <p>15 Q. The chest pain, did you understand that he complained</p> <p>16 of any chest pain other than the chest pain related to</p> <p>17 the fall, the contusion?</p> <p>18 A. I didn't see any sign of any other kind of chest pain.</p> <p>19 Q. And clinically, how might one distinguish between</p> <p>20 chest pain from a trauma or injury to the chest wall</p> <p>21 as opposed to chest pain attributable to some cardiac</p> <p>22 event?</p> <p>23 A. The doctor can gently press over the area that's</p> <p>24 hurting, and if it hurts worse, that's a strong sign</p> <p>25 that the pain is probably from the trauma. They could</p>	<p style="text-align: right;">Page 28</p> <p>1 would have shown if it had been done?</p> <p>2 A. Yes, I do. For sure, it would have shown tachycardia,</p> <p>3 that's a heart rate that's above normal, and it's</p> <p>4 extremely likely that it would have shown signs of</p> <p>5 ischemia. That's inadequate blood flow to the heart</p> <p>6 muscle.</p> <p>7 Q. And what allows you to say that an EKG would have</p> <p>8 shown signs of ischemia?</p> <p>9 A. We know that this patient had prior cardiac ischemia.</p> <p>10 We know from the autopsy that he had very high grade</p> <p>11 narrowings in his coronary arteries, and coupled with</p> <p>12 the low blood pressure that he had on this ER visit,</p> <p>13 that would mean the blood would have great trouble</p> <p>14 getting through those narrowed coronary arteries at</p> <p>15 that lowered pressure and there would not be enough</p> <p>16 blood flow to the heart muscle.</p> <p>17 Q. And you're able to conclude that based upon your</p> <p>18 review without needing to speculate?</p> <p>19 A. No. When you say "conclude," that means absolutely</p> <p>20 certain. I can't be absolutely certain, but with his</p> <p>21 coronaries that we know he had and the low pressure of</p> <p>22 blood pressure pushing blood through those coronary</p> <p>23 arteries, it is very likely that he would have</p> <p>24 ischemia.</p> <p>25 Q. That you believe would have shown up as changes on an</p>

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<p style="text-align: right;">Page 29</p> <p>1 EKG?</p> <p>2 A. Yes, on the electrocardiogram.</p> <p>3 Q. What would those changes have been, in your opinion?</p> <p>4 A. A downward sagging of a certain segment called the ST</p> <p>5 segment on his electrocardiogram and/or T wave</p> <p>6 inversions. That's T waves that are upside down</p> <p>7 instead of right side up.</p> <p>8 Q. And I'm sorry, did you say T as in Thomas?</p> <p>9 A. Yes, T as in Thomas.</p> <p>10 Q. And you're talking about ST depression as opposed to</p> <p>11 elevation?</p> <p>12 A. Exactly. Depression would be seen in ischemia, which</p> <p>13 he is likely having. You would also see elevations in</p> <p>14 an acute myocardial infarction.</p> <p>15 Q. Are you able to offer an opinion as to whether he was</p> <p>16 suffering an acute myocardial infarction at the time</p> <p>17 that he was in the Emergency Department?</p> <p>18 A. There's not enough information to give an opinion.</p> <p>19 Q. Have you seen any of his prior EKGs?</p> <p>20 A. None, no.</p> <p>21 Q. Would those be significant to you?</p> <p>22 A. Yes, they would be.</p> <p>23 Q. Are you able to offer an opinion that an EKG, if it</p> <p>24 had been performed in the Emergency Department on</p> <p>25 May 6, 2016, are you able to offer an opinion whether</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. You would agree that Mr. Dunigan had no complaints of</p> <p>2 shortness of breath?</p> <p>3 A. None.</p> <p>4 Q. You would agree that his lungs were clear to</p> <p>5 auscultation bilaterally?</p> <p>6 A. Yes.</p> <p>7 Q. That he had no rales or wheezes?</p> <p>8 A. Right, yes.</p> <p>9 MR. HARRINGTON: Jack, can we take a quick</p> <p>10 break?</p> <p>11 MR. O'LOUGHLIN: Sure.</p> <p>12 MR. HARRINGTON: Are you in the middle of</p> <p>13 something? Okay.</p> <p>14 (Off the record at 1:03 p.m.)</p> <p>15 (Back on the record at 1:09 p.m.)</p> <p>16 BY MR. O'LOUGHLIN:</p> <p>17 Q. In your report, you indicate an opinion that</p> <p>18 Mr. Dunigan should have had blood tests including</p> <p>19 glucose?</p> <p>20 A. Yes.</p> <p>21 Q. Are you able to offer an opinion as to what such a</p> <p>22 test would have shown?</p> <p>23 A. Specifically, the glucose would have been abnormal.</p> <p>24 Q. What's abnormal?</p> <p>25 A. I believe that it would have been abnormally low.</p>
<p style="text-align: right;">Page 30</p> <p>1 it would have shown changes from prior EKGs?</p> <p>2 A. I know it would show ischemia. I don't know if his</p> <p>3 prior EKGs would have shown ischemia. There's just</p> <p>4 not enough information to conclude that.</p> <p>5 Q. Did you review the chest x-ray, the actual images</p> <p>6 yourself?</p> <p>7 A. No, just the report.</p> <p>8 Q. From that report, are you suggesting that that chest</p> <p>9 x-ray demonstrates findings consistent with congestive</p> <p>10 heart failure?</p> <p>11 A. Yes, early congestive heart failure. Fluid</p> <p>12 engorgement in the lungs.</p> <p>13 Q. That is of clinical significance, you believe?</p> <p>14 A. Yes. It's of clinical significance in the context of</p> <p>15 a man with his past history and medical conditions.</p> <p>16 Q. So you would consider mild central pulmonary vascular</p> <p>17 congestion and small bilateral pleural effusion to be</p> <p>18 suggestive of congestive heart failure?</p> <p>19 A. Yes, early congestive heart failure.</p> <p>20 Q. Would you expect those findings to produce symptoms of</p> <p>21 congestive heart failure?</p> <p>22 A. Not necessarily. It could range, like I said earlier,</p> <p>23 symptoms of congestive heart failure can be just no</p> <p>24 shortness of breath to mild shortness of breath as it</p> <p>25 gets more severe or can't catch your breath at all.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Which would be what level?</p> <p>2 A. Below 90.</p> <p>3 Q. What allows you to offer that opinion?</p> <p>4 A. The blood glucose that they obtained at Western</p> <p>5 Michigan University, the so-called vitreous glucose,</p> <p>6 was drastically low at 15 and the blood level, I'm</p> <p>7 sorry, the level of glucose in your vitreous reflects</p> <p>8 what the glucose was in your blood shortly before</p> <p>9 death.</p> <p>10 Q. Can that be impacted by resuscitation efforts?</p> <p>11 A. No, it can't.</p> <p>12 Q. So you're able to offer an opinion, to a reasonable</p> <p>13 degree of medical probability, greater than 50 percent</p> <p>14 probability, that Mr. Dunigan's glucose, if it had</p> <p>15 been checked in the Emergency Department, would have</p> <p>16 been below 90?</p> <p>17 A. Yes. And I have to add, in all honesty, that the</p> <p>18 nurse in the police station did a quick AccuCheck</p> <p>19 glucose, which is less accurate, and got a mildly</p> <p>20 elevated glucose, which is inconsistent with what they</p> <p>21 found at autopsy.</p> <p>22 Q. Do you recall what that value was?</p> <p>23 A. Yes. I can't find it, but I recall it was around 130</p> <p>24 or 140 on her AccuCheck.</p> <p>25 Q. And if that been detected, if that had been, the value</p>

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<p style="text-align: right;">Page 33</p> <p>1 detected in the Emergency Department, would it have</p> <p>2 required any additional care?</p> <p>3 A. No, if that were the value, no, it wouldn't require</p> <p>4 additional care.</p> <p>5 Q. What values, high and low, of glucose would you deem</p> <p>6 to require additional care?</p> <p>7 A. In a diabetic who comes in after dizziness or a fall,</p> <p>8 if it's below 70, it requires treatment.</p> <p>9 Q. And what, is there a high, an upper limit that also</p> <p>10 requires treatment?</p> <p>11 A. Yes, but that's not nearly as important. If it's</p> <p>12 above 200, they would give him a little insulin, but</p> <p>13 that's not life-threatening like a low glucose would</p> <p>14 be.</p> <p>15 Q. Okay. I assume that you don't recall seeing the EMS</p> <p>16 record --</p> <p>17 A. I do.</p> <p>18 Q. -- on Mr. Dunigan?</p> <p>19 A. Yes, I do.</p> <p>20 Q. I'm sorry, go ahead.</p> <p>21 A. I know what you're going to ask.</p> <p>22 Q. What am I going to ask?</p> <p>23 A. On the ambulance, they did an AccuCheck and they got a</p> <p>24 glucose of 172.</p> <p>25 Q. So you did see those records?</p>	<p style="text-align: right;">Page 35</p> <p>1 additional treatment, true?</p> <p>2 A. Not on the ambulance, it didn't, but what is important</p> <p>3 is what was the glucose in the hospital emergency</p> <p>4 room.</p> <p>5 Q. And are you able to offer -- in light of the AccuCheck</p> <p>6 in the ambulance -- by the way, do you know whether</p> <p>7 Dr. Rigot was aware of that value?</p> <p>8 A. He said in his deposition that he had seen it on some</p> <p>9 sort of hanging chart on a clipboard.</p> <p>10 Q. And did he have a right to rely upon and consider that</p> <p>11 information?</p> <p>12 A. I believe he did.</p> <p>13 Q. And despite that information, you believe you are able</p> <p>14 to offer an opinion that if Mr. Dunigan's glucose had</p> <p>15 been checked by a laboratory test in the ED, it would</p> <p>16 have been abnormally low?</p> <p>17 A. Yes.</p> <p>18 Q. What would you base that on?</p> <p>19 A. By the level that they obtained upon his death, the</p> <p>20 level that was just a few hours after the ER visit.</p> <p>21 Q. Anything else?</p> <p>22 A. No.</p> <p>23 Q. What was the time period between his Emergency</p> <p>24 Department examination by Dr. Rigot and the time of</p> <p>25 his death?</p>
<p style="text-align: right;">Page 34</p> <p>1 A. Yes, I did.</p> <p>2 Q. And if that was accurate, that would not require any</p> <p>3 additional treatment, correct?</p> <p>4 A. Not at that moment in time when it was 172.</p> <p>5 Q. Do you have any reason to believe that that AccuCheck</p> <p>6 by the EMS personnel was inaccurate?</p> <p>7 A. It's known to be less accurate than a real lab</p> <p>8 determination, but the other, the other consideration</p> <p>9 is that a glucose of a certain value can decline by</p> <p>10 100 points if you inject insulin in that patient and</p> <p>11 don't give them food.</p> <p>12 Q. Do you know whether anyone injected insulin in</p> <p>13 Mr. Dunigan?</p> <p>14 A. No, we have no information, and the doctor didn't ask,</p> <p>15 Dr. Rigot didn't ask "When did you last eat," or "When</p> <p>16 did you last take your insulin?"</p> <p>17 Q. I think I asked this question and you may have</p> <p>18 answered it.</p> <p>19 Are you able to offer an opinion that the</p> <p>20 glucose level checked by the, by AccuCheck by the EMS</p> <p>21 personnel, was inaccurate?</p> <p>22 A. It's less likely to be accurate than the lab-obtained</p> <p>23 glucose. But I, no, I can't say that we know that it</p> <p>24 was inaccurate.</p> <p>25 Q. And if it was accurate, it didn't require any</p>	<p style="text-align: right;">Page 36</p> <p>1 A. Approximately five hours.</p> <p>2 Q. And could the glucose level have dropped in that</p> <p>3 period of time?</p> <p>4 A. Yes, it could have.</p> <p>5 Q. Could it have dropped from normal to the value</p> <p>6 detected at autopsy?</p> <p>7 A. Yes, it could have.</p> <p>8 Q. So it could have been normal at the time he was</p> <p>9 examined in the Emergency Department, true?</p> <p>10 A. It's, it's possible, but if this drop was from</p> <p>11 insulin, which almost certainly was the case, it would</p> <p>12 have stopped, it would have started dropping already</p> <p>13 while he was having his ER visit. No one gave him</p> <p>14 insulin at Bronson, so he must have gotten it or taken</p> <p>15 it before he came.</p> <p>16 Q. Before he came where?</p> <p>17 A. To the Bronson ER.</p> <p>18 Q. I'm confused. If he had gotten insulin, it would have</p> <p>19 lowered his blood sugar?</p> <p>20 A. The minute he took it, it would have started lowering</p> <p>21 his blood sugar and it would have continued lowering</p> <p>22 his blood sugar over the several hours unless he had</p> <p>23 been given some orange juice or something to eat.</p> <p>24 Q. So are you assuming that Mr. Dunigan took insulin</p> <p>25 before, sometime before the ambulance picked him up?</p>

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<p style="text-align: right;">Page 37</p> <p>1 A. I do believe that he did.</p> <p>2 Q. You don't hold yourself out as an expert in pathology,</p> <p>3 do you?</p> <p>4 A. No.</p> <p>5 Q. If Mr. Dunigan had presented to an Emergency</p> <p>6 Department with a history of a fall due to tripping</p> <p>7 and a shoulder injury and exhibited no other signs of</p> <p>8 a diabetic emergency, would the Emergency Department,</p> <p>9 in your opinion, have been required to do lab tests</p> <p>10 including a glucose?</p> <p>11 MR. HARRINGTON: Objection to form,</p> <p>12 foundation, improper hypothetical, facts not in</p> <p>13 evidence.</p> <p>14 Go ahead, Doctor.</p> <p>15 THE WITNESS: If it were the circumstances</p> <p>16 that you're describing where it was a clear-cut</p> <p>17 traumatic shoulder injury due to a slip and fall, I</p> <p>18 don't think they would be required to do blood work.</p> <p>19 BY MR. O'LOUGHLIN:</p> <p>20 Q. You state that the autopsy revealed congestive heart</p> <p>21 failure?</p> <p>22 A. Yes.</p> <p>23 Q. Upon what do you base that statement?</p> <p>24 A. The lungs were heavy and had an engorgement, fluid</p> <p>25 engorgement.</p>	<p style="text-align: right;">Page 39</p> <p>1 A. I don't recall. Could I look for a second?</p> <p>2 Q. Sure.</p> <p>3 MR. HARRINGTON: Shoot, I don't have it</p> <p>4 here, I don't think.</p> <p>5 THE WITNESS: I just have my notes from the</p> <p>6 autopsy, which don't include the causes of death.</p> <p>7 Wait a second.</p> <p>8 BY MR. O'LOUGHLIN:</p> <p>9 Q. By the way, Doctor -- I'm sorry, go ahead.</p> <p>10 A. They said that the autopsy showed severe coronary</p> <p>11 artery disease, congestive heart failure and cardiac</p> <p>12 enlargement.</p> <p>13 Q. Who said that?</p> <p>14 A. The Western Michigan University pathology people.</p> <p>15 Q. And you're reading that from your notes?</p> <p>16 A. Yes, from my notes.</p> <p>17 Q. You did review the autopsy report?</p> <p>18 A. Oh, yes, I did.</p> <p>19 Q. And did you see the Notice for this deposition?</p> <p>20 A. Sure, yes, I did.</p> <p>21 Q. Did you see that it asked you to bring with you all of</p> <p>22 the material you had reviewed?</p> <p>23 A. Yes.</p> <p>24 Q. Is there a reason you didn't do that?</p> <p>25 A. It was too voluminous. It was too voluminous to</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. Which you believe was indicative of congestive heart</p> <p>2 failure which was present at the time he was in the</p> <p>3 Emergency Department?</p> <p>4 A. Yes. Wait. Could you repeat that question again?</p> <p>5 Q. Is it your belief that the lungs were heavy with</p> <p>6 congestive heart failure at the time he was in the</p> <p>7 Emergency Department?</p> <p>8 A. Yes. We know it was because of fluid engorgement on</p> <p>9 the chest x-ray.</p> <p>10 Q. Did you see anywhere in the autopsy that they</p> <p>11 attributed the death to congestive heart failure?</p> <p>12 A. That the cause of death -- I don't recall.</p> <p>13 Q. If the pathologist concluded that congestive heart</p> <p>14 failure was a cause of death, would you have expected</p> <p>15 him or her to put that in the autopsy report?</p> <p>16 MR. HARRINGTON: Foundation, form,</p> <p>17 speculation.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: They usually put the</p> <p>20 immediate cause of death, which in his case could be</p> <p>21 arrhythmia or cardiac arrest, and therefore, might not</p> <p>22 put in the other contributing causes like congestive</p> <p>23 heart failure.</p> <p>24 BY MR. O'LOUGHLIN:</p> <p>25 Q. Do you know what causes they did put in?</p>	<p style="text-align: right;">Page 40</p> <p>1 bring.</p> <p>2 Q. Did Mr. Dunigan have any other clinical signs or</p> <p>3 symptoms of congestive heart failure at the time he</p> <p>4 was in the Emergency Department?</p> <p>5 A. No, not that were described.</p> <p>6 Q. In your report, do you have that now?</p> <p>7 A. Yes.</p> <p>8 Q. Or do you still only have notes?</p> <p>9 A. I have my report.</p> <p>10 Q. Okay. Page 2, first paragraph, the last sentence, you</p> <p>11 say "After Mr. Dunigan was told he could go home, he</p> <p>12 objected and a public safety officer, Ernie Knauf,"</p> <p>13 K-n-a-u-f, "entered his cubicle, ER Room Number 24,</p> <p>14 and told him he had to leave." Upon what did you base</p> <p>15 that information?</p> <p>16 A. The testimony of Ernie Knauf.</p> <p>17 Q. Which you somehow interpreted meaning that he actually</p> <p>18 went into the Emergency Department, in the room where</p> <p>19 Mr. Dunigan was being examined and told him he had to</p> <p>20 leave?</p> <p>21 A. Yes.</p> <p>22 Q. You believe that to be true?</p> <p>23 A. I do. I do not believe that Mr. Dunigan willingly</p> <p>24 left his ER cubicle. He objected. The officer said</p> <p>25 you know, "You got to leave."</p>

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<p style="text-align: right;">Page 41</p> <p>1 And the patient said "Well, you can arrest</p> <p>2 me. You can take me to jail." I don't think that</p> <p>3 that interaction would have occurred if the patient</p> <p>4 were willing and able to leave the emergency room.</p> <p>5 Q. Did you see Dr. Rigot's dictation or his record that</p> <p>6 indicated that Mr. Dunigan was agreeable to the plan</p> <p>7 and to the plan for discharge?</p> <p>8 A. Yes, I saw that.</p> <p>9 Q. So you think that's incorrect and that, in fact,</p> <p>10 Mr. Dunigan objected to leaving the Emergency</p> <p>11 Department where he was examined by Dr. Rigot?</p> <p>12 A. Yes.</p> <p>13 Q. And are you making a distinction here between the</p> <p>14 Emergency Department where he was examined versus the</p> <p>15 waiting room?</p> <p>16 A. Yes, I am.</p> <p>17 Q. Okay. And does that fact, as you understand it,</p> <p>18 impact your opinions in this case?</p> <p>19 A. It does.</p> <p>20 Q. How would it impact your opinions if you were told</p> <p>21 that Officer Knauf never had any contact with</p> <p>22 Mr. Dunigan until sometime after 5 o'clock in the</p> <p>23 morning when Mr. Dunigan was already in the waiting</p> <p>24 room?</p> <p>25 A. If it's really true that Ernie Knauf didn't see the</p>	<p style="text-align: right;">Page 43</p> <p>1 being untruthful, but more likely he ducked out when</p> <p>2 he was finished with the patient, and only later did</p> <p>3 the nurses get all the flack that the patient didn't</p> <p>4 want to go.</p> <p>5 Q. And that's your understanding based upon your thorough</p> <p>6 review of the materials you've received in this case?</p> <p>7 A. Well, that he ducked out or wasn't aware that the</p> <p>8 patient didn't want to leave or didn't indicate that</p> <p>9 in his note, one of those possibilities.</p> <p>10 Q. Did Mr. Dunigan sign for his discharge instructions?</p> <p>11 A. Yes, he did. However, there were some instructions</p> <p>12 regarding fall in the hospital that he wasn't given,</p> <p>13 didn't sign out on, and those were later added to his</p> <p>14 chart.</p> <p>15 Q. Upon what do you base that statement?</p> <p>16 A. They were unsigned where the patient's signature is</p> <p>17 indicated, and I don't know the basis for my belief</p> <p>18 that they were added to the chart after his visit.</p> <p>19 Q. Are you aware that he did sign at 4:11 a.m., the form</p> <p>20 which states "The instructions have been explained to</p> <p>21 me and I understand the instructions. All my</p> <p>22 questions have been answered. I have been given a</p> <p>23 copy of these instructions"?</p> <p>24 A. Yes.</p> <p>25 Q. And again, from what do you conclude that he did not</p>
<p style="text-align: right;">Page 42</p> <p>1 patient until he was in the waiting room, that goes</p> <p>2 against what Officer Knauf said about talking to the</p> <p>3 patient in the cubicle. The two are inconsistent.</p> <p>4 Q. And where is it that you saw that Officer Knauf said</p> <p>5 that he talked to the patient in the cubicle?</p> <p>6 A. In the report or narrative that he gave, he stated</p> <p>7 that he was called there by the nurses when the</p> <p>8 patient didn't want to leave, and this was before he</p> <p>9 went or was taken to the waiting room.</p> <p>10 Q. Okay.</p> <p>11 A. I see patients almost daily in the emergency room, and</p> <p>12 when an interaction is over, if they're not happy, I,</p> <p>13 as the doctor, have to stay around and reconcile</p> <p>14 things. And when it really gets rough, only then is</p> <p>15 the hospital security officer called in, and this guy,</p> <p>16 Knauf, was called in to handle this patient.</p> <p>17 Q. So you believe that's what happened in this case, that</p> <p>18 Mr. Dunigan was not happy, that he did not want to</p> <p>19 leave the Emergency Department, and Officer Knauf was</p> <p>20 called in because of that?</p> <p>21 A. Yes.</p> <p>22 Q. And given that belief, it would also be your belief</p> <p>23 that Dr. Rigot was untruthful when he said that</p> <p>24 Mr. Dunigan was agreeable to the plan for discharge?</p> <p>25 A. It is possible that the emergency room doctor was</p>	<p style="text-align: right;">Page 44</p> <p>1 receive instructions regarding the fall or anything</p> <p>2 else?</p> <p>3 A. It's a special form, Bronson Hospital's "Falls in the</p> <p>4 Hospital" form, that requires someone, patient or</p> <p>5 nurse, to sign that it was reviewed. It wasn't</p> <p>6 reviewed with the patient. They didn't sign it, but</p> <p>7 it was put in his chart.</p> <p>8 Q. I'm sorry. I can't tell what you're referring to.</p> <p>9 A. It's one of the discharge forms that was made a part</p> <p>10 of his chart.</p> <p>11 Q. Which you received and reviewed in this case?</p> <p>12 A. I did, yes.</p> <p>13 Q. But you don't have it with you?</p> <p>14 A. I don't, and I can tell that it was on Pages 21 and 22</p> <p>15 of his Bronson chart.</p> <p>16 Q. Well, as was alluded to earlier, the pages aren't</p> <p>17 always the same, depending on when and how the chart</p> <p>18 is printed.</p> <p>19 A. Yes, I can see that.</p> <p>20 MR. O'LOUGHLIN: Jim, do you have a</p> <p>21 numbered copy of the records that would be similar to</p> <p>22 what Dr. Stark received?</p> <p>23 MR. HARRINGTON: Let me look. I'm kind of</p> <p>24 scratching my head, Jack. Can you redirect me?</p> <p>25 MR. O'LOUGHLIN: I'm trying to determine</p>

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<p style="text-align: right;">Page 45</p> <p>1 what record or evidence he thought he saw about the</p> <p>2 patient not getting instructions, if I understood him</p> <p>3 correctly, about some fall sheet or fall instruction.</p> <p>4 MR. HARRINGTON: All of the stuff that I</p> <p>5 have under the patient education is at the Bates</p> <p>6 stamped Pages 21, 22, 23, and then on Page 23 it talks</p> <p>7 about fall prevention, something not on file. That's</p> <p>8 all I have.</p> <p>9 THE WITNESS: This has got to be what I was</p> <p>10 referring to.</p> <p>11 MR. HARRINGTON: Hang on one second, Jack.</p> <p>12 I showed him the signature page.</p> <p>13 MR. O'LOUGHLIN: But I'm still trying to</p> <p>14 figure out what he's talking about that Mr. Dunigan</p> <p>15 didn't get some instruction about a fall.</p> <p>16 THE WITNESS: It just indicated under Fall</p> <p>17 and Fall Prevention, the summary was for learning</p> <p>18 progress not on file, and discharge instructions</p> <p>19 indicated none on Page 23.</p> <p>20 BY MR. O'LOUGHLIN:</p> <p>21 Q. You're under the Patient Education section?</p> <p>22 A. I am.</p> <p>23 Q. And the Topic and Materials Given?</p> <p>24 A. Yes. Education.</p> <p>25 Q. And you believe that -- I'm sorry. Your</p>	<p style="text-align: right;">Page 47</p> <p>1 discharged from the Emergency Department to the</p> <p>2 waiting room?</p> <p>3 A. Yes.</p> <p>4 Q. In the second paragraph on Page 2, you are referring</p> <p>5 to the surveillance video from the waiting room, true?</p> <p>6 A. Yes.</p> <p>7 Q. And in the second sentence in that second paragraph,</p> <p>8 you say "In the process, he fell to the floor,</p> <p>9 drooling from the mouth. One officer applied a</p> <p>10 sternal rub to stimulate him but got no response.</p> <p>11 'You are fine. Look at you. You're acting,' the</p> <p>12 officer said. And finally four officers took him by</p> <p>13 wheelchair and deposited him into the back seat of a</p> <p>14 patrol car."</p> <p>15 A. Yes.</p> <p>16 Q. You believe you saw that on the video?</p> <p>17 A. I saw everything except the sternal rub. I couldn't</p> <p>18 see that, but an officer testified to it.</p> <p>19 Q. And you believe that happened in the waiting room at</p> <p>20 Bronson?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. How did you know what the officer was saying?</p> <p>23 A. I heard those words on the CD.</p> <p>24 Q. Okay. Do you understand that the Bronson surveillance</p> <p>25 video had no audio?</p>
<p style="text-align: right;">Page 46</p> <p>1 interpretation of that is that it was intended that</p> <p>2 Mr. Dunigan would get information about preventing</p> <p>3 falls in the hospital?</p> <p>4 A. Yes.</p> <p>5 Q. And he didn't?</p> <p>6 A. Yes.</p> <p>7 Q. Did he -- all right. Are you somehow critical of</p> <p>8 that?</p> <p>9 A. I'm not sure because I can't tell what they did or did</p> <p>10 not give him. That's a criticism.</p> <p>11 Q. Do you have an -- oh, I'm sorry, go ahead.</p> <p>12 A. It's a criticism that I would like to withdraw.</p> <p>13 Q. Good. But, all right, if Mr. Dunigan was agreeable to</p> <p>14 being discharged and did not object and did leave the</p> <p>15 Emergency Department to go to the waiting room</p> <p>16 voluntarily, would you be critical of anything in</p> <p>17 relation to his decision to leave the Emergency</p> <p>18 Department?</p> <p>19 A. I would be critical of the physician's decision to</p> <p>20 have him leave the Emergency Department. It wasn't an</p> <p>21 adequate workup. If the physician told the patient</p> <p>22 "You're all done, you can leave," I'm not critical of</p> <p>23 the patient for not having the expertise to know that</p> <p>24 things were not yet completed.</p> <p>25 Q. Is it your belief that Mr. Dunigan objected to being</p>	<p style="text-align: right;">Page 48</p> <p>1 A. No, I don't.</p> <p>2 Q. You believe you heard audio on the Bronson</p> <p>3 surveillance video?</p> <p>4 A. Yes.</p> <p>5 Q. And you believe that on that video, you saw</p> <p>6 Mr. Dunigan drooling from the mouth in the waiting</p> <p>7 room?</p> <p>8 A. No. I could not see him get a sternal rub or see him</p> <p>9 drooling from the mouth, but the officers there</p> <p>10 testified to that.</p> <p>11 Q. Would it alter your opinion if those events or</p> <p>12 anything like them only occurred after Mr. Dunigan was</p> <p>13 in the back of the police car and not in the waiting</p> <p>14 room?</p> <p>15 A. If that were actually the case, yes, it would alter my</p> <p>16 perception of what I wrote here.</p> <p>17 Q. Do you know whether Mr. Dunigan was ever unresponsive</p> <p>18 while he was on Bronson's property before he got into</p> <p>19 the police car?</p> <p>20 A. In the waiting room, no, I don't know. What I do know</p> <p>21 and could see was him collapse when they were trying</p> <p>22 to lift him to take him out.</p> <p>23 Q. And do you know whether that collapse was due to some</p> <p>24 physical infirmity or condition, or whether it was a</p> <p>25 voluntary action?</p>

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<p style="text-align: right;">Page 49</p> <p>1 A. I don't know. And the officers there testified they</p> <p>2 thought he intentionally went limp.</p> <p>3 Q. And from your observation, you couldn't dispute that?</p> <p>4 A. Could not.</p> <p>5 Q. Are you aware of any evidence indicating that</p> <p>6 Mr. Dunigan ever asked to be seen by a healthcare</p> <p>7 professional after he entered the waiting room?</p> <p>8 A. It's not indicated in any of the records or testimony.</p> <p>9 Q. In your review of the surveillance in the waiting</p> <p>10 room, did you see Mr. Dunigan getting up from the</p> <p>11 wheelchair and moving to different chairs around the</p> <p>12 waiting room without anyone's assistance?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you recall seeing him in the waiting room on the</p> <p>15 video moving at all?</p> <p>16 A. No. He was seated.</p> <p>17 Q. And did he ever change seats, from your review?</p> <p>18 A. I don't recall.</p> <p>19 Q. Would that be significant to you?</p> <p>20 A. It could be, yes.</p> <p>21 Q. It would be significant if you saw that he was up and</p> <p>22 walking around, moving from chair to chair while he</p> <p>23 was in the waiting room?</p> <p>24 A. That could be of significance. It indicates that at</p> <p>25 least at one time he was able to ambulate.</p>	<p style="text-align: right;">Page 51</p> <p>1 Bronson employee or police officer ever actually</p> <p>2 recognized that Mr. Dunigan had a serious medical</p> <p>3 condition?</p> <p>4 A. No, there was no evidence of that.</p> <p>5 Q. In fact, based upon your review, would you agree that,</p> <p>6 from all the evidence you've seen, it appears that</p> <p>7 neither the Emergency Department doctor nor the nurses</p> <p>8 nor the security guards, ever thought that Mr. Dunigan</p> <p>9 had a serious emergency medical condition?</p> <p>10 A. Your question is whether they perceived or believed</p> <p>11 that he had an emergency medical condition, and all I</p> <p>12 can judge is by their actions. By their actions, they</p> <p>13 couldn't have believed that he had an emergency</p> <p>14 condition.</p> <p>15 Q. Are you aware of any evidence indicating that</p> <p>16 Mr. Dunigan's condition was unstable as of the time of</p> <p>17 discharge?</p> <p>18 A. We are limited in that determination by the fact that</p> <p>19 the ER staff never repeated his blood pressure, which</p> <p>20 was abnormally low, so we don't know, when he finally</p> <p>21 left, if it was still low or even if it was lower. We</p> <p>22 don't have the information required to know that.</p> <p>23 Q. Okay. So would that mean that you're not aware of any</p> <p>24 evidence indicating that he was unstable at the time</p> <p>25 of discharge?</p>
<p style="text-align: right;">Page 50</p> <p>1 MR. HARRINGTON: And objection to form,</p> <p>2 foundation and facts not in evidence.</p> <p>3 BY MR. O'LOUGHLIN:</p> <p>4 Q. Did you ever hear Mr. Dunigan say anything on any of</p> <p>5 the videos you watched?</p> <p>6 A. I don't think so, no.</p> <p>7 Q. Do you recall him asking the police officers to take</p> <p>8 the handcuffs off after he was in the back seat of the</p> <p>9 car?</p> <p>10 A. I do not recall that.</p> <p>11 Q. Would that be significant to you?</p> <p>12 A. Only in that he was conscious enough to make that</p> <p>13 request.</p> <p>14 Q. That would mean he was not unresponsive, true?</p> <p>15 A. At that moment in time, yes.</p> <p>16 Q. Are you aware of any evidence indicating that he asked</p> <p>17 the officers to take him to jail?</p> <p>18 A. No. That was earlier. That was earlier when the</p> <p>19 hospital security officer, Ernie Knauf, was</p> <p>20 confronting him.</p> <p>21 Q. Do you know whether Ernie Knauf is a police officer or</p> <p>22 a Bronson security officer?</p> <p>23 A. I believed that he was just a security officer for the</p> <p>24 hospital.</p> <p>25 Q. Are you aware of any evidence indicating that any</p>	<p style="text-align: right;">Page 52</p> <p>1 A. I would, he was unstable, when they assessed him, but</p> <p>2 there is no further information.</p> <p>3 Q. What evidence of instability, other than your</p> <p>4 interpretation of the blood pressure, are you aware of</p> <p>5 when they assessed him?</p> <p>6 A. To elevated heart rate of 110 or whatever it was, and</p> <p>7 the low blood pressure in a formerly hypertensive</p> <p>8 patient were the signs of instability.</p> <p>9 Q. Anything else?</p> <p>10 A. No.</p> <p>11 Q. What are your parameters for blood pressure within</p> <p>12 normal limits?</p> <p>13 A. The national standards are 120/80, but in the context</p> <p>14 of a man who's got chronic uncontrolled hypertension,</p> <p>15 his pressure of 101/60 is alarmingly low.</p> <p>16 Q. What do you think was causing that?</p> <p>17 A. Heart failure, heart failure.</p> <p>18 Q. Anything else?</p> <p>19 A. No.</p> <p>20 Q. Do you know what Mr. Dunigan's blood pressure was when</p> <p>21 the EMS picked him up?</p> <p>22 A. No, I don't.</p> <p>23 Q. And you don't know what his blood pressure was at the</p> <p>24 time he was discharged, true?</p> <p>25 A. No, but that is because they didn't check his blood</p>

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<p>1 pressure.</p> <p>2 Q. And I can't recall if you didn't see it. You were</p> <p>3 aware that they rechecked the pulse and it was at 90?</p> <p>4 A. Yes.</p> <p>5 Q. That wouldn't indicate any instability, true?</p> <p>6 A. No.</p> <p>7 Q. So are you aware of any evidence indicating that he</p> <p>8 was unstable at the time of discharge?</p> <p>9 A. No.</p> <p>10 Q. Are you aware of any evidence indicating that</p> <p>11 Mr. Dunigan was treated any differently than any other</p> <p>12 patient who might have presented to Bronson with the</p> <p>13 same symptoms and history?</p> <p>14 A. I think he was, and the evidence is that he was given</p> <p>15 short shrift compared to other people who had come in</p> <p>16 with a fall and dizziness. He wasn't given a simple</p> <p>17 electrocardiogram, where other patients would have</p> <p>18 received one. And in escorting him out of that</p> <p>19 hospital, the staff were mocking him and provoking</p> <p>20 him, which is highly unusual for ER patients. I do</p> <p>21 think he was treated differently.</p> <p>22 Q. Have you seen records or any evidence about how other</p> <p>23 patients are treated at Bronson?</p> <p>24 A. No, none.</p> <p>25 Q. You don't know of anybody else who may have presented</p>	<p>1 than what people get in any community.</p> <p>2 Q. And even though you may believe that, you can't say</p> <p>3 that the reason he got the treatment he got was</p> <p>4 because of any of his characteristics or his financial</p> <p>5 standing?</p> <p>6 A. I can't prove it.</p> <p>7 Q. And you can't point to any evidence which would</p> <p>8 support it, true?</p> <p>9 A. When the staff say "Act like a grown up ass man. Are</p> <p>10 you fucking stupid," that's evidence that the</p> <p>11 treatment is from how they are disposed to him as a</p> <p>12 human being.</p> <p>13 Q. As far as treatment in the Emergency Department as</p> <p>14 opposed to after he went to the waiting room, are you</p> <p>15 aware of any improper motive for the way he was</p> <p>16 treated and assessed?</p> <p>17 A. Just, just what I've described, his profile.</p> <p>18 Q. Are you able to offer -- I don't see anything in your</p> <p>19 report about EMTALA. Are you going to claim that</p> <p>20 there is some EMTALA violation in this case?</p> <p>21 A. Yes. If asked, yes. My report was based on his</p> <p>22 medical treatment and how it impacted him.</p> <p>23 Q. Has anybody advised you that this is not a medical</p> <p>24 malpractice claim?</p> <p>25 A. Recently, yes.</p>
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<p>1 with the same or similar symptoms who were treated any</p> <p>2 differently than Mr. Dunigan was, true?</p> <p>3 A. I know that humane standards and medical standards in</p> <p>4 Kalamazoo, Michigan are the same or similar to other</p> <p>5 communities including mine in Greenwich, Connecticut.</p> <p>6 These medical treatments and interpersonal</p> <p>7 interactions were far different than what anyone would</p> <p>8 see in any community.</p> <p>9 Q. Are you aware of any evidence indicating that</p> <p>10 Mr. Dunigan was treated differently because of his</p> <p>11 age, sex, race, socioeconomic status, religion or any</p> <p>12 other improper reason?</p> <p>13 A. I think he was. The hard evidence that you asked for</p> <p>14 is just the indication of his past medical history</p> <p>15 that's part of the ER chart that he had used drugs,</p> <p>16 that his race was African-American, that he may be</p> <p>17 homeless, these are the indicators that I think</p> <p>18 underlie the treatment that he got.</p> <p>19 Q. Those are characteristics he had.</p> <p>20 What evidence, if any, are you aware of</p> <p>21 that those factors entered into his treatment</p> <p>22 decisions or any decisions by Bronson?</p> <p>23 A. I can't see into the brains of the staff who</p> <p>24 interacted with him, but those indicators were present</p> <p>25 and the treatment that he got was markedly different</p>	<p>1 Q. So back when you did your report, nobody told you that</p> <p>2 this was an EMTALA case?</p> <p>3 A. I don't believe so, no.</p> <p>4 Q. Did you offer any opinion as to whether there were any</p> <p>5 EMTALA violations?</p> <p>6 A. In talking with the -- I don't recall.</p> <p>7 Q. Are you familiar with EMTALA?</p> <p>8 A. Yes, I am.</p> <p>9 Q. What's your understanding of what EMTALA requires?</p> <p>10 A. Requires to provide emergency medical care and labor</p> <p>11 and delivery care without discrimination on religion,</p> <p>12 economic status, racial background, things like that.</p> <p>13 Q. Do you know what the statute says?</p> <p>14 A. No.</p> <p>15 Q. Do you know whether EMTALA requires that the providers</p> <p>16 actually recognize and perceive that the patient has</p> <p>17 an emergency medical condition?</p> <p>18 A. I'm aware that this applies to emergency conditions.</p> <p>19 Not being a lawyer, I don't know what the statute</p> <p>20 specifically says.</p> <p>21 Q. Would it be fair to say then that you don't know if</p> <p>22 there was an EMTALA violation in this case?</p> <p>23 A. Oh, I know there was an EMTALA violation in that they</p> <p>24 sent this individual out without stabilizing him or</p> <p>25 doing appropriate workup.</p>

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<p style="text-align: right;">Page 57</p> <p>1 Q. Are you aware of any evidence that any of the Bronson 2 personnel or the police officers actually perceived 3 that Mr. Dunigan had an emergency medical condition or 4 that he was unstable?</p> <p>5 A. As I said before, I can only go by the behavior of 6 these Bronson individuals. They acted as if there 7 were no perception of an emergency situation.</p> <p>8 Q. And if you were to assume that EMTALA requires that 9 the hospital personnel actually recognize that a 10 patient has an emergency medical condition and is 11 unstable, if that's what EMTALA requires, you would 12 agree that EMTALA was not violated here?</p> <p>13 A. I don't have the training to make that legal decision. 14 I know that any doctor and any law person, if they saw 15 a person buckling his legs and collapsing, would know 16 that there is an emergency medical condition.</p> <p>17 Q. Do you recall my question?</p> <p>18 A. Yes. Whether they, whether they perceived, and I'm 19 saying you must have perceived given the behavior that 20 he exhibited.</p> <p>21 Q. Didn't you just tell me, based upon your review, that 22 they did not perceive that he had an emergency 23 condition?</p> <p>24 A. I said their actions reflected a lack of appreciation.</p> <p>25 Q. And do you know of any evidence indicating that they</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. You testified in medical malpractice claims in 2 Michigan, true?</p> <p>3 A. I have.</p> <p>4 Q. You've done that for Mr. Harrington's law firm, true?</p> <p>5 A. I have in the past.</p> <p>6 Q. And you're aware that this is not a medical 7 malpractice claim?</p> <p>8 A. I'm aware, yes.</p> <p>9 MR. O'LOUGHLIN: Pass the witness.</p> <p>10 EXAMINATION</p> <p>11 BY MR. VANDER LAAN:</p> <p>12 Q. Doctor, my name is Allan Vander Laan, and I represent 13 Kalamazoo Department of Public Safety officers who 14 responded and transported Mr. Dunigan to the jail.</p> <p>15 Can you tell me where on the report you 16 were looking at, what page you're referring to, when 17 you're talking about Ernie Knauf?</p> <p>18 MR. HARRINGTON: Allan, you're looking for 19 what, the deposition page or the report?</p> <p>20 MR. VANDER LAAN: Was his deposition taken?</p> <p>21 MR. O'LOUGHLIN: It was not.</p> <p>22 MR. VANDER LAAN: I didn't think so.</p> <p>23 THE WITNESS: I'm just looking. It's going 24 to take a minute.</p> <p>25 BY MR. VANDER LAAN:</p>
<p style="text-align: right;">Page 58</p> <p>1 did actually perceive and appreciate that Mr. Dunigan 2 had an emergency medical condition?</p> <p>3 A. Not through their actions and their testimony.</p> <p>4 Q. Or anything else you've seen?</p> <p>5 A. Correct.</p> <p>6 Q. And if EMTALA requires that the hospital personnel 7 actually do perceive and recognize that a patient has 8 an emergency medical condition and is unstable, if 9 that was a requirement of EMTALA, you would agree that 10 that requirement was not met in this case?</p> <p>11 MR. HARRINGTON: Form, foundation.</p> <p>12 THE WITNESS: I'm not in a position to rule 13 on their requirements.</p> <p>14 BY MR. O'LOUGHLIN:</p> <p>15 Q. And does that mean that you're not in a position to 16 say whether this was an EMTALA violation?</p> <p>17 A. I'm not in a position to interpret that law. What I 18 can say is they were far below the standard of care 19 for any community. That's what I can say.</p> <p>20 Q. And you would say that your opinions would support, 21 you believe, a medical malpractice claim?</p> <p>22 A. Yes, it would.</p> <p>23 Q. And you're aware that medical malpractice claims can 24 be filed in Michigan?</p> <p>25 A. Yes, yes.</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. What I'm looking for, Doctor, is you indicated that 2 Ernie Knauf told Mr. Dunigan to leave his room, or 3 they had an encounter in his room, and I'm just 4 wondering where you found that.</p> <p>5 A. Yes. It was actual testimony of Mr. Knauf that was 6 part of a summary of this episode, a summary that was 7 made.</p> <p>8 Q. Well, Ernie Knauf didn't testify. His deposition was 9 not taken.</p> <p>10 A. No, it wasn't a deposition. It was like one of these 11 supplemental information forms, incident investigation 12 report.</p> <p>13 Q. All right. I looked through the 34 pages and I 14 couldn't find it, so I'm just wondering where I'm 15 missing it.</p> <p>16 A. I'm on Page 34. I can't find it.</p> <p>17 Q. Okay. You couldn't either.</p> <p>18 So you don't recall where you would have 19 read it or what serves as the basis of your statement 20 about Officer Knauf? I'm not trying to be difficult. 21 I just don't recall in the record seeing anything.</p> <p>22 A. Do you, may I ask, do you remember the interaction 23 where the officer said "Look, you've got to leave," 24 and he said "Well, take me to jail"?</p> <p>25 Q. That was in the waiting room. I'll represent to you</p>

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<p style="text-align: right;">Page 61</p> <p>1 that that was an interaction in the waiting room and</p> <p>2 well after Mr. Dunigan was discharged.</p> <p>3 A. From my notes, this came as part of these narratives,</p> <p>4 quote unquote, that were 34 pages long, but that's</p> <p>5 what we've just reviewed and it's not in there.</p> <p>6 Q. All right. So what am I supposed to glean if it's not</p> <p>7 in there, that perhaps your notes may be inaccurate</p> <p>8 when it comes to Ernie Knauf?</p> <p>9 A. That it could have been an interaction in the waiting</p> <p>10 room and not in the cubicle.</p> <p>11 Q. Okay. So perhaps it's possible that there was no</p> <p>12 interaction between Knauf and Dunigan in his room,</p> <p>13 Room 24, where Knauf told him to leave?</p> <p>14 A. But isn't there somewhere here a summary of what</p> <p>15 Mr. Knauf said? Wasn't that contained in a report?</p> <p>16 Q. I don't know. You tell me. I can't, I can't find it.</p> <p>17 I'll wait if you think you know where that is.</p> <p>18 A. No. I've looked where I thought was the source.</p> <p>19 Q. Well, I'll just move on, Doctor. I realize you have</p> <p>20 limited materials there. If it's not in the 34 page</p> <p>21 report that you thought it was in, I mean we'll just</p> <p>22 go with that. And I don't recall seeing it anywhere.</p> <p>23 Can we have an agreement that when you get</p> <p>24 home --</p> <p>25 A. Sure.</p>	<p style="text-align: right;">Page 63</p> <p>1 the last sentence says you, "He was having grunting</p> <p>2 respirations and foaming from the mouth." Do you see</p> <p>3 that?</p> <p>4 A. Yes.</p> <p>5 Q. Were you able to see on the video that Mr. Dunigan was</p> <p>6 foaming from the mouth?</p> <p>7 A. No.</p> <p>8 Q. And I take it you got that information because you</p> <p>9 heard one of the officers say that?</p> <p>10 A. Yes.</p> <p>11 Q. The last sentence of the third full paragraph is "He</p> <p>12 was totally unresponsive." What does that mean to</p> <p>13 you? To me it means sleeping or dead, so I just</p> <p>14 wondered what it means to you.</p> <p>15 A. He wasn't responding to voice, and they did a sternal</p> <p>16 rub there in the patrol car and he didn't react.</p> <p>17 Q. You didn't have the benefit of reading the two</p> <p>18 officers who were in the car, testimony, did you, the</p> <p>19 deposition testimony? I don't think you listed</p> <p>20 Schaefer and Nugent's deposition.</p> <p>21 A. No, I did not.</p> <p>22 Q. And would your opinion change if the officer said that</p> <p>23 he was in the back seat of the car, when</p> <p>24 Mr. Harrington was asking about, or contacted him,</p> <p>25 that they said Mr. Dunigan was responsive, that they</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. -- if you find it, if you could let Mr. Harrington</p> <p>2 know?</p> <p>3 MR. VANDER LAAN: And Mr. Harrington, you</p> <p>4 can let Jack and I know?</p> <p>5 MR. HARRINGTON: Not a problem.</p> <p>6 BY MR. VANDER LAAN:</p> <p>7 Q. Okay. Doctor, I'm just going to move on here, Doctor.</p> <p>8 On Page 2, second full paragraph in the middle, are</p> <p>9 you with me?</p> <p>10 A. Yes.</p> <p>11 Q. All right. You indicate "One officer applied a</p> <p>12 sternal rub to stimulate him but got no response.</p> <p>13 'You're fine. Look at you. You're acting,' the</p> <p>14 officer said." Do you see that? Where did that take,</p> <p>15 where'd you believe that took place and about what</p> <p>16 time?</p> <p>17 A. Until this deposition, I thought it took place in the</p> <p>18 Bronson waiting room, and the other attorney pointed</p> <p>19 to the likelihood that that occurred in the police</p> <p>20 car.</p> <p>21 Q. And what's your opinion?</p> <p>22 A. Because there was no audio in the waiting room video,</p> <p>23 it's more likely that those words were said in the</p> <p>24 patrol car.</p> <p>25 Q. Okay, thank you. The third full paragraph, second to</p>	<p style="text-align: right;">Page 64</p> <p>1 shined a light in his eye, that he reacted and that he</p> <p>2 was breathing. Would that change your mind at all?</p> <p>3 A. It wouldn't change my mind about the unresponsive part</p> <p>4 because shining a light in an unresponsive person's</p> <p>5 eyes can get a pupillary reflex, but it doesn't mean</p> <p>6 they're responsive.</p> <p>7 Q. Would it change your mind about the totally</p> <p>8 unresponsive?</p> <p>9 A. No, it wouldn't.</p> <p>10 Q. In other words, well, if the officers testified in the</p> <p>11 back seat of the patrol car, he gave him a sternal</p> <p>12 rub, he reacted and he was breathing and so they</p> <p>13 brought him, continued to the jail. If you were to</p> <p>14 believe the officers that that is true, that he was</p> <p>15 breathing, then that statement that he was totally</p> <p>16 unresponsive would not be accurate, am I correct?</p> <p>17 MR. HARRINGTON: Form, foundation.</p> <p>18 Go ahead.</p> <p>19 THE WITNESS: No, you're not correct. The</p> <p>20 breathing part does not mean that he's responsive in</p> <p>21 any way, shape or form. You can be totally</p> <p>22 unresponsive and yet be breathing. The sternal rub,</p> <p>23 on the other hand, has importance. If he groaned or</p> <p>24 moved, then he is responsive.</p> <p>25 BY MR. VANDER LAAN:</p>

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<p style="text-align: right;">Page 65</p> <p>1 Q. Well, I guess how I think about it, I'm breathing and</p> <p>2 I can recall my wife telling me that I'm totally</p> <p>3 unresponsive, so I guess I just don't want to be, I</p> <p>4 guess I can somewhat understand that.</p> <p>5 Can we agree that he wasn't dead at this</p> <p>6 point?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 A. But this is important, that if you are lying there and</p> <p>10 someone shouts in your ear and you don't startle or</p> <p>11 move, they can say you're unresponsive. And if they</p> <p>12 rub harshly on your sternum and you have no response,</p> <p>13 then you are totally unresponsive but you're still</p> <p>14 alive.</p> <p>15 Q. Okay. I have a better understanding of what you</p> <p>16 meant. Thank you.</p> <p>17 Doctor, you've never been to a police</p> <p>18 academy, have you?</p> <p>19 A. Never.</p> <p>20 Q. But not even, you know, to, perhaps you were invited</p> <p>21 to see what officers go through or anything like that?</p> <p>22 A. I've taught, I've taught law enforcement about cardiac</p> <p>23 resuscitation.</p> <p>24 Q. Okay. But have you ever gone, for example, your local</p> <p>25 Police Department has invited you to observe the</p>	<p style="text-align: right;">Page 67</p> <p>1 of looking at the video, can you tell if, just from</p> <p>2 looking at the video, if Mr. Dunigan is legitimately</p> <p>3 in distress or if he was just giving the appearance of</p> <p>4 someone in distress?</p> <p>5 A. One thing in particular indicated that it was</p> <p>6 legitimate, and that is when he was lying prone or</p> <p>7 supine on the back seat or on the floor of the back</p> <p>8 seat, his head was lolling around back and forth as</p> <p>9 the car was moving, and that is someone who is really</p> <p>10 legitimately out, I mean unconscious. That was very</p> <p>11 convincing. Other things, other things --</p> <p>12 Q. I'm sorry, you don't know if the officers saw that, do</p> <p>13 you?</p> <p>14 A. No, I can't tell if they saw that.</p> <p>15 Q. And in fact, that lolling motion, is that something</p> <p>16 that someone could act out?</p> <p>17 A. Hard. It's when you lose your muscle tone that keeps</p> <p>18 your neck, protecting your head. When you lose that,</p> <p>19 your head can roll back and forth like a doll's head.</p> <p>20 That was very convincing to me, that he was</p> <p>21 unconscious.</p> <p>22 Q. I'm sorry, go ahead. My turn or yours?</p> <p>23 A. Yes.</p> <p>24 Q. I think I interrupted you, I'm sorry.</p> <p>25 A. No, I'm finished.</p>
<p style="text-align: right;">Page 66</p> <p>1 training of those officers?</p> <p>2 A. No.</p> <p>3 Q. Okay. And am I fair to -- can I assume that you've</p> <p>4 never served as a reserve officer?</p> <p>5 A. No.</p> <p>6 Q. And have you ever done ride-alongs with perhaps some</p> <p>7 of your police friends or anything like that?</p> <p>8 A. No.</p> <p>9 Q. And would I be fair in saying you don't know the</p> <p>10 requirement that governs the behavior of a police</p> <p>11 officer in the State of Michigan?</p> <p>12 A. No.</p> <p>13 Q. And you've never testified as an expert in police</p> <p>14 practices, correct? I mean, that's not your area of</p> <p>15 expertise?</p> <p>16 A. It's not my area of expertise. In taser cases,</p> <p>17 taser-related cases I have testified.</p> <p>18 Q. Okay. And that would have been on the effects of a</p> <p>19 taser on the heart?</p> <p>20 A. Yes, yes.</p> <p>21 Q. Okay. Not whether the officers were justified or</p> <p>22 reasonable in tasing someone, but what the effects</p> <p>23 of a taser is, correct?</p> <p>24 A. No, I have not.</p> <p>25 Q. All right. Looking at the video or what you remember</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Was there anything else about the video where you</p> <p>2 could point to and say "A fellow could not act that.</p> <p>3 This shows objectively that he was in distress,"</p> <p>4 besides the lolling?</p> <p>5 A. There was some visible spit or foam or something on</p> <p>6 the side of his mouth. I couldn't tell if he was</p> <p>7 "foaming" or not, but there was something on the side</p> <p>8 of his lips, and that usually you don't see unless</p> <p>9 someone is losing consciousness.</p> <p>10 Q. Okay. Is it possible that someone could do that</p> <p>11 intentionally?</p> <p>12 A. Yes, someone could.</p> <p>13 Q. All right. Is there anything else on the video where</p> <p>14 you would say someone cannot act this, it's objective,</p> <p>15 it's objective evidence of someone being in distress</p> <p>16 at any time in the video? I'm not confining it to the</p> <p>17 back of the patrol car.</p> <p>18 A. Yes, the sternal rub, which they did do in the car,</p> <p>19 and you say that he responded in some way. I didn't</p> <p>20 think that he responded. If I'm incorrect --</p> <p>21 Q. Well, I can only go by the officers' testimony. And I</p> <p>22 understand, I think what you're saying is you're going</p> <p>23 by what you observed on the video?</p> <p>24 A. Yes. I thought he didn't respond, and that is also a</p> <p>25 sign. No one who's conscious and who is faking it</p>

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<p style="text-align: right;">Page 69</p> <p>1 will just lie there and let someone, you know, put</p> <p>2 their knuckles, rub it on your sternum.</p> <p>3 Q. Okay. Anything else, Doctor, that we haven't covered?</p> <p>4 A. No, nothing else.</p> <p>5 Q. Doctor, do you have an opinion as to when and/or where</p> <p>6 Mr. Dunigan died?</p> <p>7 A. I do think that it was just before, just before</p> <p>8 arrival at the police headquarters because no one on</p> <p>9 arrival actually took his vital signs to determine if</p> <p>10 there was pulse or breathing. The nurse there did two</p> <p>11 or three ancillary things that wouldn't have shown us</p> <p>12 if he died, and only when she touched his carotid did</p> <p>13 she know that he was dead.</p> <p>14 Q. And I know you don't have the benefit of testimony,</p> <p>15 but if these two officers said that when they, when</p> <p>16 the deputies at the jail took Mr. Dunigan out of the</p> <p>17 car, he was breathing, and if those corrections</p> <p>18 officers would say "When we took him out of the car he</p> <p>19 was breathing," would, and you believe that, could we</p> <p>20 say that he died sometime after he was taken out of</p> <p>21 the car?</p> <p>22 A. Yes, if we believe that, we could say that.</p> <p>23 MR. VANDER LAAN: Doctor. I hope you enjoy</p> <p>24 your time here with your family, and travel safely.</p> <p>25 Thank you very much for your patience.</p>	<p style="text-align: right;">Page 71</p> <p>1 whether foaming or drooling out of the mouth took</p> <p>2 place. And the question was posed to you that if this</p> <p>3 actually took place in the back of the police vehicle,</p> <p>4 that it would have changed some of your opinions or</p> <p>5 altered them in some way. I don't think the question</p> <p>6 was asked: How would it change your opinions as it</p> <p>7 relates to the timing and location of that occurring?</p> <p>8 A. If the foaming and the lack of sternal rub occurred in</p> <p>9 the back of the vehicle, it means that he was in more</p> <p>10 danger and should have been taken immediately to an</p> <p>11 emergency facility, and my opinion isn't changed on</p> <p>12 that fact.</p> <p>13 Q. Had the police officers brought Mr. Dunigan back to</p> <p>14 the hospital, would he have survived?</p> <p>15 A. Yes. If he were still alive in the car but</p> <p>16 manifesting these dangerous signs, if they had taken</p> <p>17 him to an emergency room, he would be there where</p> <p>18 monitoring and a defibrillator were available so that</p> <p>19 when he arrested, they could promptly defibrillate</p> <p>20 him. He lost any chance of that by staying in the</p> <p>21 police car.</p> <p>22 Q. Well, when did he die?</p> <p>23 A. Either near the end of his ride in the vehicle, in the</p> <p>24 police cruiser or on arrival to the police station.</p> <p>25 Q. I just want to clear something up, Doctor. I know you</p>
<p style="text-align: right;">Page 70</p> <p>1 THE WITNESS: Thank you.</p> <p>2 EXAMINATION</p> <p>3 BY MR. HARRINGTON:</p> <p>4 Q. I've got a couple.</p> <p>5 Doctor, what is a mechanical fall?</p> <p>6 A. A mechanical fall is a slip and a fall that's due to</p> <p>7 some external object like a banana peel or a manhole</p> <p>8 cover is missing and you slip in it and you fall. A</p> <p>9 non mechanical fall is something that causes you to be</p> <p>10 dizzy or lose consciousness that makes you fall, and</p> <p>11 that is an indicator of something medically wrong.</p> <p>12 Q. What do you believe caused Mr. Dunigan to have the</p> <p>13 fall that ultimately brought him into the hospital?</p> <p>14 A. It was dizziness.</p> <p>15 MR. O'LOUGHLIN: Form and foundation.</p> <p>16 MR. VANDER LAAN: Join.</p> <p>17 BY MR. HARRINGTON:</p> <p>18 Q. I'm sorry, it was what?</p> <p>19 A. It was dizziness. He told the emergency room staff</p> <p>20 that he got off the bus, he became dizzy, he just</p> <p>21 didn't feel right, and he fell and he injured his</p> <p>22 chest. This was not a mechanical fall like all those</p> <p>23 doctors said it was.</p> <p>24 Q. There is a question about, I guess, the timing and</p> <p>25 location of when the sternal rub took place, also</p>	<p style="text-align: right;">Page 72</p> <p>1 didn't bring your entire file, but I did provide you</p> <p>2 with some documentation back in July of 2017.</p> <p>3 A. Sure, yes.</p> <p>4 Q. And you have that referenced in the notes?</p> <p>5 A. Oh, yes.</p> <p>6 Q. All right. Also, I have a letter here enclosing those</p> <p>7 records.</p> <p>8 A. Yes.</p> <p>9 Q. And what was the first bullet-pointed document that</p> <p>10 was provided to you?</p> <p>11 A. Amended Complaint versus Bronson Hospital outlining</p> <p>12 the facts of the case.</p> <p>13 Q. Okay. So would that have discussed the EMTALA claim?</p> <p>14 A. Yes, yes, it did. I'm sorry.</p> <p>15 MR. HARRINGTON: That's all I've got.</p> <p>16 RE-EXAMINATION</p> <p>17 BY MR. O'LOUGHLIN:</p> <p>18 Q. I also have a couple more, Doctor. Can you hear me</p> <p>19 from here?</p> <p>20 A. Yes, yes, I can.</p> <p>21 Q. You were asked about how the fact that the sternal rub</p> <p>22 and supposed foaming of the mouth happened in the back</p> <p>23 of the police car would affect your opinion. If you</p> <p>24 assume that there were no Bronson personnel involved</p> <p>25 with Mr. Dunigan after he was placed in the police</p>

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<p style="text-align: right;">Page 73</p> <p>1 car, would you agree that you have no information</p> <p>2 indicating that any Bronson person ever observed that</p> <p>3 event?</p> <p>4 A. Yes. If it occurred in the police car, then the</p> <p>5 Bronson staff didn't observe that event. They still</p> <p>6 observed the buckling of his legs and inability to</p> <p>7 walk in the waiting room.</p> <p>8 Q. Which you indicated you could not determine whether</p> <p>9 that was voluntary or involuntary?</p> <p>10 A. That is correct. No way to determine that.</p> <p>11 Q. Are you aware of any indication that any Bronson</p> <p>12 employee ever observed Mr. Dunigan being short of</p> <p>13 breath or complaining of shortness of breath?</p> <p>14 A. No, I don't believe so.</p> <p>15 Q. Do you have any opinion as to Mr. Dunigan's life</p> <p>16 expectancy if he had survived this evening, or this</p> <p>17 morning?</p> <p>18 A. I haven't been asked, but I do.</p> <p>19 Q. What would that be?</p> <p>20 A. He was 57 years old, and I honestly would estimate 67</p> <p>21 or something like that.</p> <p>22 Q. On what basis?</p> <p>23 A. His medical condition, his lifestyle, his living</p> <p>24 conditions. He could not have lived into the 80s like</p> <p>25 one of the medical experts estimated.</p>	<p style="text-align: right;">Page 75</p> <p>1 A. There's no indication in the records that we have.</p> <p>2 Q. In your opinion, is losing one's balance an indication</p> <p>3 necessarily of a medical problem?</p> <p>4 A. It could be, yes.</p> <p>5 Q. Is it always?</p> <p>6 A. No.</p> <p>7 Q. If I'm attempting to walk along a curb, I may lose my</p> <p>8 balance and fall off the curb into the street or onto</p> <p>9 the sidewalk without any medical condition causing</p> <p>10 that, true?</p> <p>11 A. That's right.</p> <p>12 Q. And if I have hemiparesis due to a past stroke and</p> <p>13 need a cane to ambulate and I'm getting off a bus, I</p> <p>14 can fall and lose my balance without any medical</p> <p>15 problem, true?</p> <p>16 A. That's possible due to weakness of one leg, but this</p> <p>17 patient specifically said that he was dizzy. He</p> <p>18 became dizzy and didn't feel himself.</p> <p>19 Q. And was it your understanding that that was a</p> <p>20 historical complaint? In other words, he was</p> <p>21 describing what happened at the time of the fall?</p> <p>22 A. Yes.</p> <p>23 Q. And again, I can't recall if you saw the EMS records</p> <p>24 or not. You did indicate you were aware of the blood</p> <p>25 sugar test by EMS?</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. Do you know the average life expectancy of a patient</p> <p>2 in end stage renal disease on dialysis?</p> <p>3 A. I think it's six to eight years.</p> <p>4 Q. What do you base that on?</p> <p>5 A. Just my reading.</p> <p>6 Q. Mr. Dunigan was a patient with end stage renal disease</p> <p>7 on dialysis, true?</p> <p>8 A. Yes, he was.</p> <p>9 Q. Is that life expectancy shortened if the patient is</p> <p>10 noncompliant with dialysis?</p> <p>11 A. If noncompliant, yes.</p> <p>12 Q. Do you believe Mr. Dunigan had any responsibility for</p> <p>13 his own well-being?</p> <p>14 A. Yes.</p> <p>15 MR. HARRINGTON: Objection to form and</p> <p>16 foundation.</p> <p>17 BY MR. O'LOUGHLIN:</p> <p>18 Q. If he was having a medical or physical problem, would</p> <p>19 you expect him to tell people about that if he wanted</p> <p>20 help?</p> <p>21 A. Yes.</p> <p>22 Q. Are you aware of any indication that Mr. Dunigan ever</p> <p>23 indicated that he wanted help or medical attention</p> <p>24 after the time he left the Emergency Department and</p> <p>25 went to the waiting room?</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Yes.</p> <p>2 Q. Do you know where you got that information?</p> <p>3 A. Right.</p> <p>4 Q. Do you know where you got that information?</p> <p>5 A. I actually got to see that EMS this morning as part of</p> <p>6 the deposition earlier, so we have it here in the</p> <p>7 room.</p> <p>8 Q. From that, the EMS report, did you note that</p> <p>9 Mr. Dunigan's breathing at the time EMS saw him was</p> <p>10 normal, unlabored and clear?</p> <p>11 A. Yes.</p> <p>12 Q. Were you aware from that report that he ambulated with</p> <p>13 assistance to the stretcher?</p> <p>14 A. No, but I wouldn't be surprised.</p> <p>15 Q. Did you find anything abnormal about his vital signs</p> <p>16 as they were taken by the EMS personnel?</p> <p>17 A. I just need to locate that sheet. All those vital</p> <p>18 signs were normal except his blood pressure was on the</p> <p>19 low side.</p> <p>20 Q. Low end of normal?</p> <p>21 A. Yes, and very low for this individual.</p> <p>22 Q. And did you note that EMS found him to have no</p> <p>23 complaints of chest pain, shortness of breath, nausea,</p> <p>24 vomiting, weakness, dizziness, numbness or tingling?</p> <p>25 A. Where, where was that in the EMS report?</p>

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<p style="text-align: right;">Page 77</p> <p>1 Q. At the bottom of the second page, at least from what I</p> <p>2 have. Change that. I didn't count the pages right.</p> <p>3 Bottom of the third page.</p> <p>4 A. Thanks. It says Page 7 out of 13 on the bottom.</p> <p>5 Q. Not on my copy, but the last two lines of the page</p> <p>6 that starts Additional Assessment Notes.</p> <p>7 A. Okay, yes, I see that. All of those things are there.</p> <p>8 Q. Would you agree that an EKG is a poor indicator of the</p> <p>9 risk of sudden cardiac death?</p> <p>10 A. It's an incentive, it's an incentive indicator, but</p> <p>11 it's one of the best things that we have in an</p> <p>12 emergency room.</p> <p>13 Q. But a patient can have a normal EKG even with cardiac</p> <p>14 ischemia?</p> <p>15 A. No. 30 percent of the time, if someone has cardiac</p> <p>16 ischemia, it won't show up on an EKG and it will show</p> <p>17 up 70, 80 percent of the time.</p> <p>18 Q. Would you have expected, then, Mr. Dunigan's past EKGs</p> <p>19 at times when he was short of breath, tachycardic, to</p> <p>20 have demonstrated ischemia?</p> <p>21 A. During those times, I would have expected it, yes.</p> <p>22 Q. Would it alter your opinion if they did not?</p> <p>23 A. No, it wouldn't.</p> <p>24 Q. Why not?</p> <p>25 A. Because they don't always have to show up on the EKG.</p>	<p style="text-align: right;">Page 79</p> <p>1 standard of care opinions?</p> <p>2 MR. HARRINGTON: I'm going to object to the</p> <p>3 form. I mean this isn't, as pled at this point, a</p> <p>4 malpractice case. It's an EMTALA case, and he's</p> <p>5 qualified to testify as to any EMTALA violations that</p> <p>6 he sees, whether it be from doctors, nurses, security</p> <p>7 guards, receptionists, etcetera.</p> <p>8 MR. O'LOUGHLIN: I certainly disagree with</p> <p>9 that, but --</p> <p>10 MR. HARRINGTON: So Doctor, if you're</p> <p>11 critical of any of the people that worked inside of</p> <p>12 the hospital regarding EMTALA violations, then go</p> <p>13 ahead and answer his questions.</p> <p>14 THE WITNESS: Not being a security guard,</p> <p>15 I'm probably not qualified to testify on the fine</p> <p>16 points of law enforcement or maintaining order, but</p> <p>17 when a security guard does something that is medically</p> <p>18 wrong, I can comment on it. And when you're tasked</p> <p>19 with removing somebody off your premises and then you</p> <p>20 find that that somebody can't stand and his legs</p> <p>21 buckle, it's improper to continue to remove that</p> <p>22 person. And as a regular person or a law enforcement</p> <p>23 person, you're obligated to bring them back for</p> <p>24 medical evaluation, and they didn't do that.</p> <p>25 BY MR. O'LOUGHLIN:</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. And your belief is that an EKG would have shown ST</p> <p>2 segment depression and T wave --</p> <p>3 A. Inversion.</p> <p>4 Q. -- inversion?</p> <p>5 A. Yes.</p> <p>6 Q. And why would it have shown those things on this</p> <p>7 occasion if it didn't show them in the past?</p> <p>8 A. Because he was getting ready to have a cardiac arrest</p> <p>9 five hours later. He had early congestive heart</p> <p>10 failure on the x-ray and he had been dizzy. It's</p> <p>11 likely that it would have shown up on this one.</p> <p>12 Q. Doesn't require any speculation on your part to come</p> <p>13 to that conclusion?</p> <p>14 A. No, because we're only talking about likelihood, not</p> <p>15 that it would absolutely have shown.</p> <p>16 Q. Mr. Dunigan was at risk for sudden cardiac death due</p> <p>17 to his underlying medical conditions, true?</p> <p>18 A. Yes, he was.</p> <p>19 Q. And he was at risk for sudden cardiac death before he</p> <p>20 ever fell getting off the bus, true?</p> <p>21 A. Yes, he was.</p> <p>22 Q. If you assume that you are not qualified to offer</p> <p>23 standard of care opinions as to any of the Bronson</p> <p>24 personnel -- well, actually, do you have any opinions</p> <p>25 as to the Bronson Hospital personnel other than</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. You used, if I understood what you said at the</p> <p>2 beginning, it sounded like you said if you're a</p> <p>3 security officer making medical decisions. Do you</p> <p>4 believe any security officer made any medical</p> <p>5 decisions in this case?</p> <p>6 MR. HARRINGTON: I'm going to object to the</p> <p>7 form and foundation. That's not what he said.</p> <p>8 THE WITNESS: No, as opposed to criticizing</p> <p>9 a fine point of how they put on handcuffs or use</p> <p>10 restraint devices, I'm commenting on the fact that</p> <p>11 they hoisted up and dragged someone who couldn't walk</p> <p>12 on his own who had just been evaluated in the</p> <p>13 emergency room. I'm criticizing that, and I think I</p> <p>14 am qualified to criticize that.</p> <p>15 BY MR. O'LOUGHLIN:</p> <p>16 Q. If the person the security officers were dealing with</p> <p>17 was simply uncooperative and purposefully went limp,</p> <p>18 would you find that they had a duty to make sure that</p> <p>19 he was seen by some medical professional?</p> <p>20 A. Yes.</p> <p>21 MR. HARRINGTON: Objection to form,</p> <p>22 foundation, facts not in evidence.</p> <p>23 Go ahead, Doctor.</p> <p>24 THE WITNESS: If they suspected that he was</p> <p>25 intentionally going limp but he was just on his way</p>

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<p style="text-align: right;">Page 81</p> <p>1 out from an ER visit, I do think that they were, they</p> <p>2 should have gotten him back for some medical</p> <p>3 attention.</p> <p>4 BY MR. O'LOUGHLIN:</p> <p>5 Q. If they'd already seen him ambulating on his own, if</p> <p>6 they knew that he'd already been seen and released by</p> <p>7 a physician, and if they thought that he was simply</p> <p>8 refusing to cooperate, why would that require that he</p> <p>9 be seen by a medical professional?</p> <p>10 MR. HARRINGTON: Form, foundation, facts</p> <p>11 not in evidence.</p> <p>12 Go ahead and answer.</p> <p>13 THE WITNESS: Just because he had just been</p> <p>14 seen by a physician doesn't mean that this limping or</p> <p>15 collapsing of his legs shouldn't be evaluated by a</p> <p>16 physician. They can think that he's faking, but they</p> <p>17 still need to have some qualified person assess that.</p> <p>18 BY MR. O'LOUGHLIN:</p> <p>19 Q. So would it be your opinion that if a security officer</p> <p>20 found a visitor sitting in a hallway and asked them to</p> <p>21 leave and the person was conversant, showing no sign</p> <p>22 of breathing difficulty or any other problem but</p> <p>23 simply refused to get up, that they would have to take</p> <p>24 that person to the Emergency Department?</p> <p>25 MR. HARRINGTON: Objection to form,</p>	<p style="text-align: right;">Page 83</p> <p>1 BY MR. O'LOUGHLIN:</p> <p>2 Q. And Doctor, your 5 pages of notes have now been marked</p> <p>3 as Exhibit 1?</p> <p>4 A. Yes.</p> <p>5 MR. O'LOUGHLIN: I would ask that those be</p> <p>6 attached to the transcript.</p> <p>7 BY MR. O'LOUGHLIN:</p> <p>8 Q. Have you made any other notes or writings relating to</p> <p>9 this case other than your report?</p> <p>10 A. I scribbled a random note on the defense cardiology</p> <p>11 expert's report.</p> <p>12 Q. And what is your random note?</p> <p>13 A. It just, that this expert, Ernst von Schwartz said</p> <p>14 that the patient would have died anyplace if there</p> <p>15 wasn't a defibrillator present. He said that his</p> <p>16 ventricular fibrillation was entirely unforeseen, and</p> <p>17 he notes that he couldn't find an EKG report in this</p> <p>18 Bronson ER visit. And lastly, the fall, the fall from</p> <p>19 the bus was likely to be syncope since the patient had</p> <p>20 complained of dizziness and just lost balance.</p> <p>21 Q. Whose report is that?</p> <p>22 A. His name is Ernst Ruediger von Schwartz from Los</p> <p>23 Angeles, and I think he's a defense expert.</p> <p>24 Q. In what field?</p> <p>25 A. Cardiologist.</p>
<p style="text-align: right;">Page 82</p> <p>1 foundation, facts not in evidence.</p> <p>2 Go ahead and answer.</p> <p>3 THE WITNESS: What you're describing, no, I</p> <p>4 don't think they have an obligation to take them to</p> <p>5 the emergency room because all that they're seeing is</p> <p>6 that he's refusing to get up. If they saw his legs</p> <p>7 buckle or him fall, I think that that's a different</p> <p>8 story.</p> <p>9 BY MR. O'LOUGHLIN:</p> <p>10 Q. And you watched this surveillance, the surveillance</p> <p>11 video from start to finish?</p> <p>12 A. Oh, I really did, both of them.</p> <p>13 Q. And you don't recall Mr. Dunigan ever moving from one</p> <p>14 chair to another on his own?</p> <p>15 MR. HARRINGTON: Form and foundation.</p> <p>16 THE WITNESS: No, and this was the Bronson</p> <p>17 surveillance footage. No.</p> <p>18 BY MR. O'LOUGHLIN:</p> <p>19 Q. By the way, how many pages of notes do you have there?</p> <p>20 A. Five.</p> <p>21 MR. O'LOUGHLIN: Can we have those marked</p> <p>22 as Exhibit 1, please?</p> <p>23 MARKED FOR IDENTIFICATION:</p> <p>24 DEPOSITION EXHIBIT 1</p> <p>25 2:53 p.m.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. What's his report? Is his report typed?</p> <p>2 A. It's a long typewritten report that's 23 pages long.</p> <p>3 Q. Any other writings you've made --</p> <p>4 A. No.</p> <p>5 Q. -- relating to this case?</p> <p>6 A. No.</p> <p>7 Q. What'd you charge for your time?</p> <p>8 A. \$350 for review and \$600 for deposition.</p> <p>9 Q. What about for trial?</p> <p>10 A. Just a second. \$4,200 a day for trial.</p> <p>11 Q. What percentage of your income is derived from medical</p> <p>12 legal work as opposed to your practice of medicine?</p> <p>13 A. It varies between 5 percent and 10 percent.</p> <p>14 MR. O'LOUGHLIN: Thank you, Doctor.</p> <p>15 MR. VANDER LAAN: No questions.</p> <p>16 MR. HARRINGTON: No questions.</p> <p>17 MR. O'LOUGHLIN: Sabrina, make sure that</p> <p>18 the exhibit is attached, etran and mini with exhibit</p> <p>19 attached.</p> <p>20 MR. VANDER LAAN: Same order.</p> <p>21 (The deposition was concluded at 2:58 p.m.</p> <p>22 Signature of the witness was not requested by</p> <p>23 counsel for the respective parties hereto.)</p> <p>24</p> <p>25</p>

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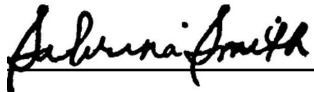
<p>1 CERTIFICATE OF NOTARY</p> <p>2 STATE OF MICHIGAN)</p> <p>3) SS</p> <p>4 COUNTY OF OAKLAND)</p> <p>5</p> <p>6 I, SABRINA SMITH, certify that this</p> <p>7 deposition was taken before me on the date</p> <p>8 hereinbefore set forth; that the foregoing questions</p> <p>9 and answers were recorded by me stenographically and</p> <p>10 reduced to computer transcription; that this is a</p> <p>11 true, full and correct transcript of my stenographic</p> <p>12 notes so taken; and that I am not related to, nor of</p> <p>13 counsel to, either party nor interested in the event</p> <p>14 of this cause.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 </p> <p>20</p> <p>21</p> <p>22 SABRINA SMITH, CSR 2129</p> <p>23 Notary Public,</p> <p>24 Oakland County, Michigan.</p> <p>25 My Commission expires: August 16, 2018</p>	<p>Page 85</p>

Exhibit 5

In the Matter Of:

DUNIGAN vs OFFICER NUGENT, ET AL.

CHARLES F. LANDERS, M.D.

February 09, 2018

Prepared for you by



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw • Troy

LANDERS, M.D., CHARLES F.

02/09/2018

Pages 1-4

<p style="text-align: center;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 FOR THE WESTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4 GORDA DUNIGAN, as Personal Representative for the ESTATE Case 1:16CV-01325</p> <p>5 OF JAMES DUNIGAN, Deceased, Hon. Janet T. Neff Mag. Judge Ellen S Carmody</p> <p>6 Plaintiff,</p> <p>7 v.</p> <p>8 OFFICER DEREK NUGENT, and</p> <p>9 OFFICER ERIC SHAFFER, Defendants.</p> <p>10 AND</p> <p>11 GORDA DUNIGAN, as Personal Case 16CV-01324 Representative for the ESTATE Hon. Janet Neff 12 OF JAMES DUNIGAN, Deceased, Mag. Judge Ellen S. Carmody</p> <p>13 Plaintiff,</p> <p>14 v.</p> <p>15 BRONSON METHODIST HOSPITAL, Defendant.</p> <hr/> <p>16 ORAL DEPOSITION OF CHARLES F. LANDERS, M.D.</p> <p>17 TAKEN ON BEHALF OF THE DEFENDANTS</p> <p>18 ON FEBRUARY 9, 2018, AT 9:18AM</p> <p>19 IN TELLURIDE, COLORADO</p>	<p style="text-align: center;">Page 3</p> <p>1 INDEX</p> <p>2</p> <p>3 Examination by Mr. O'LoughlinPage 4</p> <p>4 Examination by Mr. VanderlaanPage 90</p> <p>5 Examination by Mr. Harrington. Page 108</p> <p>6 Examination by Mr. O'Loughlin. Page 117</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 EXHIBITS DESCRIPTION</p> <p>15 Page 10 EX. A CV of CHARLES F. LANDERS,</p> <p>16 Page 25 EX. B INVOICES OF DR. LANDERS</p> <p>17 Page 13 EX. C LIST OF MATERIALS PROVIDED TO DR. LANDERS</p> <p>18</p> <p>19 Page 20 EX. D NOTES, E-MAIL, REPORT OF DR.</p> <p>20 Page 19 EX. E UPTODATE AND NATIONAL KIDNEY FOUNDATION ARTICLES</p> <p>21</p> <p>22 Page 19 EX. F DR. LANDERS CASE LIST</p> <p>23</p> <p>24 Page 85 EX. G ARTICLE AND DR. LANDERS NOTES</p> <p>25</p>
<p style="text-align: center;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3</p> <p>4</p> <p>5 JAMES J. HARRINGTON, IV (P65351)</p> <p>6 Fieger, Fieger, Kenney & Harrington, P.C.</p> <p>7 Attorneys for the Plaintiff</p> <p>8 19390 West 10 Mile Road</p> <p>9 Southfield, MI 48075</p> <p>10 (248) 355-5555</p> <p>11</p> <p>12 ALLAN C. VANDERLAAN, P33893</p> <p>13 Cummings, McClorey, Davis & Acho</p> <p>14 Attorneys for the Defendant Officers</p> <p>15 2851 Charlevoix Drive, SE, Ste 327</p> <p>16 Grand Rapids, MI 49546</p> <p>17 (616) 975-7470</p> <p>18</p> <p>19 JOHN C. O'LOUGHLIN (P33343)</p> <p>20 Smith, Haughey, Rice & Roegge</p> <p>21 Attorneys for Defendant Bronson</p> <p>22 100 Monroe Center, NW</p> <p>23 Grand Rapids, MI 49503</p> <p>24 (616) 774-8000</p> <p>25</p>	<p style="text-align: center;">Page 4</p> <p>1 P-R-O-C-E-E-D-I-N-G-S</p> <p>2 CHARLES F. LANDERS, M.D.</p> <p>3 first having been duly sworn, on oath, testified as</p> <p>4 follows:</p> <p>5 EXAMINATION</p> <p>6 BY MR. O'LOUGHLIN:</p> <p>7 Q. The record should reflect that this is the</p> <p>8 deposition of Dr. Charles F. Landers. The</p> <p>9 deposition is being taken by video conference with</p> <p>10 Dr. Landers in Telluride, Colorado, Mr. Herrington</p> <p>11 in Detroit, and Mr. Vanderlaan and myself in Grand</p> <p>12 Rapids.</p> <p>13 I just lost the video of Mr. Harrington.</p> <p>14 Do you see Mr. Harrington, Doctor?</p> <p>15 A. We lost him at the same time you did.</p> <p>16 (There was a pause in the deposition</p> <p>17 because of video conference technicalities, after</p> <p>18 which the following proceedings were held:)</p> <p>19 Q. (By Mr. O'Loughlin) We will go back on</p> <p>20 the record. We had a brief loss of signal from</p> <p>21 Detroit. We are back. Again, as you got back, I</p> <p>22 was telling the doctor, I wasn't real comfortable</p> <p>23 with him talking without you on.</p> <p>24 What he was asking if we had received the</p> <p>25 notes and other exhibits, and we did receive those</p>

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<p style="text-align: right;">Page 5</p> <p>1 this morning by e-mail. I appreciate those being 2 sent. And he started to say that since he made 3 those notes he had, I think, reviewed another report 4 and has come up with an additional opinion. 5 I believe that is all we talked about, is 6 it, Doctor? 7 A. Yes. It is not an opinion. It is just an 8 additional set of things that would have been 9 included in the notes. 10 Q. Okay. Beyond that, are we ready to try to 11 get started? 12 (Reporter asking attorneys to identify 13 themselves again please.) 14 MR. O'LOUGHLIN: Sure. This is Jack 15 O'Loughlin in Grand Rapids, Michigan. 16 MR. VANDERLAAN: This is Allan Vanderlaan, 17 Grand Rapids. 18 MR. HARRINGTON: Hi. Good morning. James 19 Herrington. I am in Bingham Park, Michigan. I 20 represent the Dunigan family. 21 MR. O'LOUGHLIN: Is that good enough, 22 Ruth? 23 THE REPORTER: Yes, thank you very much, 24 Q. (By Mr. O'Loughlin) All right. This is 25 the, I think already said, deposition of Dr. Charles</p>	<p style="text-align: right;">Page 7</p> <p>1 and trial testimony at least for some of the past 2 years. 3 How long have you been doing expert 4 witness-type work? 5 A. Approximately 20 years. 6 Q. The list that was provided to me appears 7 to be all regarding medical malpractice cases, am I 8 correct on that? 9 A. There is an occasional personal injury I 10 see. 11 Q. Oh, you are right. Oh, okay. Two 12 personal injuries? 13 A. Two or three. 14 And a note about this list, I looked at it 15 this morning, and I just printed it off the desk top 16 of my computer, and page 2, three-fourths of the way 17 down, it starts over with date and testimony. And 18 there are three entries there that repeat from the 19 top of the first page. It is a glitch in how it was 20 printed, otherwise it is accurate -- 21 Q. Okay. 22 A. -- up through the date of 11-8-17. 23 Q. And starting in February -- on February 24 21, 2012? 25 A. Yes.</p>
<p style="text-align: right;">Page 6</p> <p>1 Landers. The deposition is being taken by video 2 conference. 3 Would you please state your full name? 4 A. My name is Charles Landers, L-A-N-D-E-R-S. 5 Q. And you are a physician? 6 A. I am. 7 Q. And you have been identified by the 8 plaintiff in this case as an expert witness. I 9 presume you are aware of that? 10 A. Yes. 11 Q. What are you an expert in? 12 A. My background is in internal medicine, 13 pulmonary disease and critical care. 14 Q. And I assume this is not the first time 15 you have testified as an expert? 16 A. Correct. 17 Q. Is that true? 18 A. Yes. 19 Q. How many times have -- how many times have 20 you testified as an expert? 21 A. I have been deposed I would estimate more 22 than 200 times. 23 Q. And we will get to marking the exhibits 24 that you or Mr. Harrington's office were kind enough 25 to provide, and those include a list of depositions</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. And we will come back and mark those. 2 Of the 200 cases in which you have 3 testified, can you give me an idea of how many of 4 those you have testified at the request of the 5 attorney representing the plaintiff? 6 A. In the last five years it has been between 7 80 and 90 percent plaintiff. The remainder defense. 8 Q. To what do you attribute that majority of 9 plaintiff cases? 10 MR. HARRINGTON: Objection to foundation, 11 speculation. Go ahead. 12 THE WITNESS: It is just whoever calls and 13 I do more reviews than I do testifying. I would say 14 for the reviews, it is 70 percent plaintiff. But it 15 is all word-of-mouth. I don't advertise. I have no 16 website. And people call who seek an expert and 17 from there we go. It is sometimes defense, 18 sometimes it is related to a plaintiff case. 19 Q. (By Mr. O'Loughlin) And you raise a 20 question I should have asked you. The 200 refers to 21 the number of times you have testified. If we go 22 through the numbers of times you have been asked to 23 review a case as a potential expert witness, what 24 would that be? 25 A. I don't keep track of the numbers. It</p>

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<p style="text-align: right;">Page 9</p> <p>1 would be more. The 200 is an estimate. And I don't</p> <p>2 have a total. I don't keep track of it. But in</p> <p>3 defense reviews, it is frequent that I prepare a</p> <p>4 report which is used in support of a motion for</p> <p>5 summary judgment, and often the defendant ends his</p> <p>6 involvement as do I in a legal case.</p> <p>7 Q. And let me, so we don't get lost later,</p> <p>8 let me do some housekeeping now with the exhibits</p> <p>9 that were e-mailed to me this morning. And I will</p> <p>10 have them marked on your end with a designation as A</p> <p>11 B or C on your copy.</p> <p>12 A. I have the originals of each note. And</p> <p>13 then it was copied then scanned then sent in</p> <p>14 batches. They do not have any stickers with letters</p> <p>15 or numbers in the exhibit sequence but they are in</p> <p>16 the order that I sent them.</p> <p>17 Q. Thank you. And I should be able to sync</p> <p>18 those up. Is it okay if the court reporter places</p> <p>19 exhibit stickers on your copy?</p> <p>20 A. Sure. And those can go with the court</p> <p>21 reporter and be returned to me with any other things</p> <p>22 you want as exhibits.</p> <p>23 Q. That sounds good.</p> <p>24 The first thing I have is your CV. Do you</p> <p>25 have that?</p>	<p style="text-align: right;">Page 11</p> <p>1 and employee of our medical group called Chest</p> <p>2 Medicine and Critical Care Medical Group,</p> <p>3 Incorporated. That is a group, at that time, of</p> <p>4 eight similarly trained internists with pulmonary</p> <p>5 training and critical care training. And the</p> <p>6 practice is hospital based.</p> <p>7 We previously had an outpatient practice</p> <p>8 which has closed. And our primary location was at</p> <p>9 Sharp, S-H-A-R-P, Memorial Hospital in San Diego and</p> <p>10 one of the Sharp affiliated facilities, Sharp</p> <p>11 Coronado Hospital. We had hospital privileges at</p> <p>12 those locations as well as responsibilities</p> <p>13 administratively as medical directors for critical</p> <p>14 care and respiratory therapy and other respiratory</p> <p>15 functions. So my practice was an equal share of</p> <p>16 time covering those two facilities and being</p> <p>17 involved in inpatient care, mainly at Sharp</p> <p>18 Memorial, to do admissions to the hospital from the</p> <p>19 emergency room or offices, consultative work and</p> <p>20 functioning as an attending physician in the</p> <p>21 hospital, the adjacent women's hospital, an</p> <p>22 inpatient rehab facility and Sharp Memorial, both in</p> <p>23 the ICU, the stepdown units, and the</p> <p>24 medical/surgical floors. The group covered the</p> <p>25 hospital around the clock 7-24. I participated in</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. A 3-page document?</p> <p>3 A. Yes.</p> <p>4 Q. And I have that marked as Exhibit A. And</p> <p>5 I would appreciate if the court reporter would also</p> <p>6 mark your copy as Exhibit A? Okay. Is that ready?</p> <p>7 A. Yes.</p> <p>8 Q. Is that CV current and up-to-date?</p> <p>9 A. Yes.</p> <p>10 Q. Does it contain the details of your</p> <p>11 education, training and professional background?</p> <p>12 A. Yes.</p> <p>13 Q. It does include a bibliography for</p> <p>14 writings that you have authored. Do any of those</p> <p>15 writings have anything to do with the issues in this</p> <p>16 case?</p> <p>17 A. Peripherally, the article number 7 in the</p> <p>18 Lancet has to do with monitoring high risk cardiac</p> <p>19 patients during transportation in the hospital. And</p> <p>20 those are people who were perceived to be at risk</p> <p>21 for cardiac rhythm problems. And peripherally that</p> <p>22 is related to Mr. Dunigan's situation.</p> <p>23 Q. Would you describe your practice as it</p> <p>24 existed in May of 2016?</p> <p>25 A. In May of 2016, I was working as a partner</p>	<p style="text-align: right;">Page 12</p> <p>1 that as well.</p> <p>2 And for the preceding many years, I had</p> <p>3 been the medical director of critical care for 20</p> <p>4 years. And when we built the new hospital and</p> <p>5 expanded, I had a partner who I shared that with as</p> <p>6 the medical co-director of critical care as of the</p> <p>7 date you mentioned. The practice was a busy</p> <p>8 practice. Each of the physicians would see</p> <p>9 approximately 15 inpatients a day and have a small</p> <p>10 administrative responsibility for the ICUs, in my</p> <p>11 situation, which would be less than 10 percent of my</p> <p>12 time.</p> <p>13 Q. And was the remaining 90 percent of your</p> <p>14 time spent in the practice you describe?</p> <p>15 A. Yes, the rest was clinical, from</p> <p>16 evaluating people in the emergency room, admissions</p> <p>17 to the hospital, and ongoing care in the hospital,</p> <p>18 rehab unit and the women's hospital next door, and a</p> <p>19 small amount rotating through Sharp Coronado, a much</p> <p>20 smaller facility.</p> <p>21 Q. And on average, how many hours a week did</p> <p>22 you work?</p> <p>23 A. Between 45 and 60 hours a week.</p> <p>24 Q. How many weeks out of the year did you</p> <p>25 work?</p>

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<p style="text-align: right;">Page 13</p> <p>1 A. I believe it was 40 to 42 at that time.</p> <p>2 Q. What did you do the other 10 to 12 weeks?</p> <p>3 A. The other 10 weeks would be a mixture of</p> <p>4 vacation, some professional education time and some</p> <p>5 of the -- in the group of eight, there would be</p> <p>6 people who would not constantly be assigned, so it</p> <p>7 would be unrequested days off at times.</p> <p>8 Q. Your practice is in San Diego, and at the</p> <p>9 time of this deposition you are in Telluride,</p> <p>10 Colorado. Is this part of your vacation time?</p> <p>11 A. Well, as of July of 2016 I went on medical</p> <p>12 leave, and I have subsequently retired. And I am in</p> <p>13 Telluride, Colorado on vacation now.</p> <p>14 MR. HARRINGTON: Jack, could we take a</p> <p>15 one-minute break just for one second? I have to use</p> <p>16 the rest room.</p> <p>17 MR. O'LOUGHLIN: Sure.</p> <p>18 (A break was taken in the deposition,</p> <p>19 after which the following proceedings were held:)</p> <p>20 Q. (By Mr. O'Laughlin) We are back on the</p> <p>21 record.</p> <p>22 We have established that I have a list,</p> <p>23 which was sent to me marked as Exhibit C purporting</p> <p>24 to be materials provided to Dr. Landers. And I am</p> <p>25 going to read that list. And for each item I would</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Deposition transcripts of the following</p> <p>2 people, Gorda Dunigan?</p> <p>3 A. Yes.</p> <p>4 Q. Derek Nugent?</p> <p>5 A. Yes.</p> <p>6 Q. Eric Staffer. This actually had Staffer,</p> <p>7 S-T-A-F-F-E-R, but I am sure it is intended to be</p> <p>8 Eric Shaffer who is a named defendant,</p> <p>9 S-H-A-F-F-E-R?</p> <p>10 A. Yes.</p> <p>11 Q. Ryan Szumski, S-Z-U-M-S-K-I?</p> <p>12 A. Yes. Yes.</p> <p>13 Q. Nolan Cattell, C-A-T-T-E-L-L, one of the</p> <p>14 Bronson security officers?</p> <p>15 A. Yes.</p> <p>16 Q. Charles Shoemaker, another of the Bronson</p> <p>17 security officers?</p> <p>18 A. Yes.</p> <p>19 Q. Marian Lodes, L-O-D-E-S, R.N.?</p> <p>20 A. Yes.</p> <p>21 Q. Kimberley Gilbert-Shay, S-H-A-Y, R.N.?</p> <p>22 A. Yes.</p> <p>23 Q. Erin, E-R-I-N, Blair, B-L-A-I-R, Bronson</p> <p>24 registration?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 14</p> <p>1 ask that Dr. Landers confirm or deny that he has</p> <p>2 received and reviewed the items. And the first is</p> <p>3 the Bronson surveillance video?</p> <p>4 A. Yes.</p> <p>5 Q. U-tube video of police cruiser?</p> <p>6 A. Yes.</p> <p>7 Q. Medical records from Bronson Methodist</p> <p>8 Hospital?</p> <p>9 A. Yes.</p> <p>10 Q. Police reports from the city of Kalamazoo?</p> <p>11 A. Yes.</p> <p>12 Q. Autopsy and toxicology from Western</p> <p>13 Michigan University?</p> <p>14 A. Yes.</p> <p>15 Q. Death certificate?</p> <p>16 A. Yes.</p> <p>17 Q. Complaint and Amended Complaint?</p> <p>18 A. Yes.</p> <p>19 Q. Medical records from Borgess Medical</p> <p>20 Center?</p> <p>21 A. Yes.</p> <p>22 Q. And, madam court reporter, that is</p> <p>23 Borgess, B-O-R-G-E-S-S.</p> <p>24 Medical records from Life Care EMS?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Dennis Watson, R.N.?</p> <p>2 A. Yes.</p> <p>3 Q. Christine Rohr, R-O-H-R, Bronson</p> <p>4 registration?</p> <p>5 A. Yes.</p> <p>6 Q. Amber Bishop, Bronson registration?</p> <p>7 A. Yes.</p> <p>8 Q. Adrianne, A-D-R-I-A-N-N-E, Kerstetter</p> <p>9 K-E-R-S-T-E-T-T-E-R, R.N.?</p> <p>10 A. Yes.</p> <p>11 Q. Wesley, W-E-S-L-E-Y, Rigot, R-I-G-O-T,</p> <p>12 M.D.?</p> <p>13 A. Yes.</p> <p>14 Q. And the final item on my list is the CV</p> <p>15 and expert report of the defendant expert, Dr.</p> <p>16 Schwartz?</p> <p>17 A. Yes.</p> <p>18 Q. Is there anything else that -- and I know</p> <p>19 it is difficult without that in front of you -- is</p> <p>20 there anything that you reviewed that was not</p> <p>21 included on that list, in addition to those things?</p> <p>22 A. When you mentioned the post mortem exam</p> <p>23 and toxicology, mine was listed as a lab A-I-D lab</p> <p>24 records. Now those may be the same ones you are</p> <p>25 referring to.</p>

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<p style="text-align: right;">Page 17</p> <p>1 Q. I believe they are but we will sort that 2 out. Anything else that you know of that you 3 reviewed that is not on this list that we just went 4 through?</p> <p>5 A. In my notes there are additional of -- 6 there are additional articles from an electronic 7 data base of -- called UpToDate and a internet blurb 8 from the National Kidney Foundation.</p> <p>9 Then in response to reading the expert 10 report by Dr. Schwartz, Schwarz, I have one page of 11 notes and another UpToDate article, which did not 12 come to you, that I referred to earlier that is 13 called Supportive Data For Advance Cardiac Life 14 Support in Adults With Sudden Cardiac Arrest.</p> <p>15 Some of the things that he referred to in 16 his report led me to look at that.</p> <p>17 Q. And I have the articles you mentioned 18 first. And they are marked. Aside from those 19 things, anything else that you know of that you 20 reviewed that hasn't been mentioned?</p> <p>21 A. No. I think that is it.</p> <p>22 Q. Okay. And we will come back to the -- I 23 have them already in record but I will come back to 24 the additional notes and articles that you obtained 25 after seeing Dr. Schwartz's report.</p>	<p style="text-align: right;">Page 19</p> <p>1 single page of an e-mail or e-mail between you and 2 Mr. Harrington's assistant, and your original report 3 in this matter which is comprised of four pages. I 4 am putting that on the record and that is what will 5 ultimately be Exhibit D to this deposition.</p> <p>6 And Exhibit E that I have is the 7 literature article you mentioned earlier from the 8 UpToDate and a National Kidney Foundation.</p> <p>9 And Exhibit F is the two-page list of 10 cases in which you testified that was referred to 11 earlier.</p> <p>12 A. Right.</p> <p>13 Q. Ruth, by agreement of counsel, we will 14 send you an e-mail with the attachments being the 15 exhibits that I have referred to. Hopefully, you 16 will be able to remind me to get your e-mail before 17 we are done.</p> <p>18 A. So just as a question, the articles you 19 are referring to are the National Kidney Foundation 20 one and the UpToDate article called Patient 21 Survival and Maintenance Dialysis?</p> <p>22 Q. Yes.</p> <p>23 A. And there was something else in that 24 cluster?</p> <p>25 Q. Not in that cluster.</p>
<p style="text-align: right;">Page 18</p> <p>1 And the notes you made up to that time, I 2 have one page of notes along with additional notes, 3 and I have notes both on regular lined paper and on 4 the cover pages of various depositions. I don't 5 know if you have them in the same order as I have 6 them, but I have nine pages of notes on either lined 7 paper or on the copy of the cover sheets of 8 depositions?</p> <p>9 A. I guess I would need you to identify the 10 handwritten notes because mine are not grouped 11 together.</p> <p>12 Q. Okay. And I will do that. I think I am 13 probably going to mess up the order here because the 14 way that these were marked as they are Exhibit B and 15 it also includes a copy of one e-mail to you and Mr. 16 Harrington's assistant, and then it also contains 17 your initial report from October 25, 2017.</p> <p>18 Jim, can we agree what was sent to me can 19 be included and marked, we get these to the court 20 reporter so that she can use the same copy?</p> <p>21 MR. HARRINGTON: Absolutely.</p> <p>22 MR. O'LOUGHLIN: All right.</p> <p>23 Q. (By Mr. O'Loughlin) So I am telling you, 24 Doctor, we will come back the notes but what I have 25 as Exhibit D are eight or nine pages of notes, a</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Okay.</p> <p>2 Q. Just those two items. And the cluster 3 that was Exhibit D I referred to was your notes and 4 your report, but I will keep like that because they 5 are fairly easy to assemble. I apologize for taking 6 all that time for housekeeping but I want to make 7 sure we are on the same page.</p> <p>8 And what ultimately we will get to the 9 court reporter as Exhibit D is what I was provided 10 as a list of materials provided to you. And we 11 agree that that can be included as an exhibit, even 12 though it probably wasn't produced by you. I think 13 we have now listed everything you have reviewed. Is 14 that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Have you reviewed sufficient materials and 17 obtained sufficient information to provide us with 18 whatever opinions you have today?</p> <p>19 A. Yes.</p> <p>20 MR. HARRINGTON: Let me just make one 21 clarification. I think that we provided him with a 22 note, and he can testify to that but we haven't 23 received the x-ray report yet. And I would like my 24 experts to at least receive that and comment on 25 that. And to the extent it alters any opinions or</p>

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<p style="text-align: right;">Page 21</p> <p>1 anything, I will make the witness available to be 2 examined on that issue.</p> <p>3 MR. O'LOUGHLIN: All right. And x-ray 4 report, I am pretty sure you have the report.</p> <p>5 MR. HARRINGTON: I meant the film.</p> <p>6 MR. O'LOUGHLIN: Yes, I understand.</p> <p>7 Q. (By Mr. O'Loughlin) Have you asked for 8 any additional materials, Doctor?</p> <p>9 A. I don't believe so.</p> <p>10 Q. Do you need any additional materials with 11 the possible exception of the actual x-ray film in 12 order to provide us with your opinion?</p> <p>13 A. I think this should suffice.</p> <p>14 Q. Okay. From the material you have 15 reviewed, do you have any opinion as to any of the 16 care provided or anything done to, or with or 17 regarding Mr. Dunigan other than on May 6, 2016?</p> <p>18 A. Well, I have the background information 19 from his prior Borgess hospitalization. And the 20 past history is largely derived from that, so that 21 contributes to my data base about his co-morbidities 22 and base line status as well as his life expectancy.</p> <p>23 Q. But from whatever you have reviewed 24 related to that prior medical history or his history 25 in general, did you identify anywhere where you</p>	<p style="text-align: right;">Page 23</p> <p>1 identified starting with emergency medical 2 physician?</p> <p>3 A. I was a full time emergency medical 4 physician in an academic setting for multiple years 5 prior to going into private practice.</p> <p>6 Q. What years were those?</p> <p>7 A. That would be 1977 to 1981.</p> <p>8 Q. By the way, Doctor, what is your date of 9 birth?</p> <p>10 A. 9-27-1946.</p> <p>11 Q. Making you how old?</p> <p>12 A. Let's see -- 71.</p> <p>13 Q. From your past experience as a witness in 14 many medical malpractice cases, have you become 15 familiar with the term standard of care?</p> <p>16 A. Yes.</p> <p>17 Q. What does standard of care mean to you?</p> <p>18 A. It is the care that would be provided by a 19 responsible physician in the same or similar 20 training for the same or similar circumstances.</p> <p>21 Q. Would you agree that you did not have the 22 same or similar training as any of the people 23 involved with Mr. Dunigan on May 6, 2016?</p> <p>24 A. Correct.</p> <p>25 Q. Do you intend to offer any opinions as to</p>
<p style="text-align: right;">Page 22</p> <p>1 felt that the treatment, care -- the treatment and 2 care that he received was in any way inadequate or 3 inappropriate?</p> <p>4 A. No, I have no opinion about those.</p> <p>5 Q. As to the care on May 6th when he 6 presented to the Bronson Methodist Hospital 7 emergency department, you would agree that there 8 were no internists, pulmonologists or critical care 9 physicians involved in his care, true?</p> <p>10 A. Correct.</p> <p>11 Q. You are not an emergency medical 12 physician, true?</p> <p>13 A. At this time, no.</p> <p>14 Q. And you weren't in May of 2016?</p> <p>15 A. Correct.</p> <p>16 Q. You are not a radiologist, true?</p> <p>17 A. Correct.</p> <p>18 Q. You are not an emergency medical 19 technician, true?</p> <p>20 A. Correct.</p> <p>21 Q. You are not a nurse, pre op or otherwise, 22 true?</p> <p>23 A. True.</p> <p>24 Q. And you have never been licensed or 25 practiced in any of those professions I have just</p>	<p style="text-align: right;">Page 24</p> <p>1 violations of standard of care of any of those other 2 professionals?</p> <p>3 A. That is not my intent.</p> <p>4 Q. What was your tact when you were asked to 5 look at this case?</p> <p>6 A. I was asked to look over the records 7 provided to me with attention to the issues of 8 causation and to prepare a report. That is the 9 document we have been referring to. I subsequently 10 was asked to review the numerous depositions and 11 then the background information from Borgess.</p> <p>12 Q. And did that lead to any opinions beyond 13 causation?</p> <p>14 A. The only additional component to that is a 15 life expectancy estimate that I prepared.</p> <p>16 Q. All right. We will get to that as well. 17 By the way, as far as your background, 18 experience and training, you also do not have any 19 experience or training as a police officer or law 20 enforcement officer?</p> <p>21 A. Correct.</p> <p>22 Q. True?</p> <p>23 A. True.</p> <p>24 Q. Or as a -- or as a private security 25 officer?</p>

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<p style="text-align: right;">Page 25</p> <p>1 A. Correct.</p> <p>2 Q. The invoices which were marked as Exhibit</p> <p>3 B are headed Charles F. Landers, M.D., Expert</p> <p>4 Witness Consulting, and is that a corporate entity</p> <p>5 or a partnership?</p> <p>6 A. It is a general partnership.</p> <p>7 Q. Who else is involved in that business</p> <p>8 other than you?</p> <p>9 A. My wife who does the administrative work</p> <p>10 for the invoices and the records and keeping track</p> <p>11 of the security of the records that we have in our</p> <p>12 possession, sometimes typing reports.</p> <p>13 Q. Anyone else besides you and your wife?</p> <p>14 A. No. Originally it was set up with my</p> <p>15 daughter as an employee so that we could create a</p> <p>16 group for her health insurance for multiple knee</p> <p>17 reconstructions. That was the whole purpose of</p> <p>18 setting up the partnership. And I believe at the</p> <p>19 end of this year we will take the partnership down.</p> <p>20 We no longer have any special need for it. I am the</p> <p>21 only person who does any consulting or testifying.</p> <p>22 Q. Has all of your income from consulting or</p> <p>23 testifying been run through the partnership, Charles</p> <p>24 F. Landers, M.D., Expert Witness Consulting?</p> <p>25 A. That is the intent. Sometimes we get</p>	<p style="text-align: right;">Page 27</p> <p>1 work?</p> <p>2 A. It would range from 15 to 25 percent of my</p> <p>3 annual income prior to my retirement in 2016, the</p> <p>4 dates of this.</p> <p>5 Q. You have worked with Mr. Harrington's firm</p> <p>6 in the past?</p> <p>7 A. I have.</p> <p>8 Q. And on how many occasions? Would those be</p> <p>9 listed on your list of cases where you testified?</p> <p>10 A. Several are. And there may be some from</p> <p>11 before that time. I would estimate a half dozen to</p> <p>12 eight times total.</p> <p>13 Q. All right. Aside from the additional</p> <p>14 opinions and materials which were after you reviewed</p> <p>15 the reports and before we got to documents, are all</p> <p>16 your opinions fairly set forth in your report of</p> <p>17 October 25, 2017?</p> <p>18 A. Yes. The other materials that I reviewed</p> <p>19 confirm those opinions, except for the life</p> <p>20 expectancy, which came off of his report.</p> <p>21 Q. What opinion do you have as to Mr.</p> <p>22 Dunigan's life expectancy?</p> <p>23 A. I have made an estimate that his life</p> <p>24 expectancy would be approximately five years from</p> <p>25 the time of his early death.</p>
<p style="text-align: right;">Page 26</p> <p>1 year-end tax documents that just have my name on it</p> <p>2 but the intent for us, we do have a separate -- a</p> <p>3 separate bank account and it keeps the expenses and</p> <p>4 the income separate.</p> <p>5 Q. Can you tell me what the annual revenue</p> <p>6 for the expert witness consulting business was in</p> <p>7 2017?</p> <p>8 A. No.</p> <p>9 Q. Or 2016?</p> <p>10 A. No. I don't share those numbers.</p> <p>11 Q. What do you mean share? You don't know</p> <p>12 them?</p> <p>13 A. No. I am reluctant to give them to you.</p> <p>14 I would be glad to tell you the fraction of my total</p> <p>15 income that comes from medical legal consulting, but</p> <p>16 not the actual numbers.</p> <p>17 Q. I believe I am allowed to ask either or.</p> <p>18 So all I am asking for is the amount of annual</p> <p>19 revenue you derived from your expert consulting and</p> <p>20 testimony work.</p> <p>21 A. It is variable each year, and I will not</p> <p>22 give you the numbers.</p> <p>23 Q. Well, then I will take what you will give</p> <p>24 me. What is the percentage? What percentage of</p> <p>25 your annual income comes from that expert consulting</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. Upon what do you base that opinion?</p> <p>2 A. The fact that he had been placed on</p> <p>3 dialysis within the preceding year and that he had</p> <p>4 insulin dependent diabetes and significant vascular</p> <p>5 disease.</p> <p>6 Q. You indicated a little bit ago that you do</p> <p>7 not intend to offer any opinions on violations of</p> <p>8 standard of care by the health care providers in</p> <p>9 this case. Did I get that right?</p> <p>10 A. Yes.</p> <p>11 MR. HARRINGTON: Hang on. I want a</p> <p>12 clarification. When you say standard of care, you</p> <p>13 are meaning in the traditional medical malpractice</p> <p>14 sense, not any type of violation under the counts of</p> <p>15 this Complaint, correct?</p> <p>16 MR. O'LOUGHLIN: I am asking if the</p> <p>17 standard of care that we discussed earlier in</p> <p>18 response to which I thought he said he did not</p> <p>19 intend to offer any such opinion.</p> <p>20 THE WITNESS: I have opinions about the</p> <p>21 care provided or not provided by the police officers</p> <p>22 and the security officers at Bronson. The main</p> <p>23 issue was care not provided as reflected in my</p> <p>24 report. And it is not medical care it is just</p> <p>25 referral to medical care.</p>

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<p style="text-align: right;">Page 29</p> <p>1 Q. (By Mr. O'Loughlin) Right. And I am just 2 trying to narrow it to that and make sure that I am 3 not missing anything because you do understand that 4 this is my only opportunity to learn your opinions 5 before trial?</p> <p>6 A. I understand that. And my intent is to 7 focus as mentioned.</p> <p>8 Q. Okay. Do you have any opinions as to 9 violations of the standard of care on the part of 10 any of the licensed health care professionals, 11 physicians, EMTs, nurses, radiologists or anyone 12 else who was a licensed health care professional 13 involved in Mr. Dunigan's care on May 6, 2016?</p> <p>14 A. No, and that would include the unlicensed 15 employees of the hospital and Bronson, like the 16 registration people as well.</p> <p>17 Q. Okay. Do you have any opinion as to 18 whether the health care professionals involved in 19 Mr. Dunigan's care from the presentation at the 20 emergency department through the time that Mr. 21 Dunigan was discharged to the waiting room, in that 22 period of time, do you have any opinion as to 23 whether any of those people in any way violated 24 EMTALA?</p> <p>25 A. I have no opinion about that.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. But you are the one we are deposing today 2 so I just want to confirm what your opinions are. 3 You mentioned another item. Based upon your review 4 of the medical records themselves over the time 5 period I have talked about, in other words, up 6 through the time Mr. Dunigan was wheeled into the 7 waiting room, was his condition stable?</p> <p>8 A. It was felt to be by the people providing 9 care. And the extent to which it may have been life 10 threatening was not evaluated. And they didn't -- 11 there were many things that weren't done. They 12 focused only on the presenting complaint.</p> <p>13 Q. What was the presenting complaint?</p> <p>14 A. It was referred to by the triage nurse as 15 flank pain and chest pain by the EMTs and by the 16 emergency physician Dr. Rigot.</p> <p>17 Q. And what was the history of that 18 complaint?</p> <p>19 A. On the preceding day, Thursday, he had 20 been on a bus and fell striking his chest and hip on 21 concrete, and subsequent to then, had increasing 22 pain, up to 9 on a scale of 10, which was 23 intolerable, and led to his calling for the 24 paramedics to bring him in as seen on the tapes. He 25 felt he was bleeding inside.</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. Do you know what EMTALA is?</p> <p>2 A. Yes.</p> <p>3 Q. What is your understanding of what EMTALA 4 is?</p> <p>5 A. In general terms it is an anti-dumping 6 federal law that for the individual facility that 7 involves evaluating medically any person who seeks 8 attention.</p> <p>9 Q. From your review of the records of Mr. 10 Dunigan's emergency room care, in other words, the 11 the medical records, did you make a determination as 12 to whether his presenting condition was life 13 threatening?</p> <p>14 A. I think on presentation it was potentially 15 life threatening.</p> <p>16 Q. Was it a condition which in your opinion 17 if not treated at that time was likely to cause his 18 death or serious impairment, again as of the time of 19 presentation?</p> <p>20 A. He was evaluated but not treated, and he 21 was perceived to be stable by the health care 22 providers at that time. The standard of care issues 23 regarding their performance, my understanding is, 24 will be addressed by a plaintiff's emergency room 25 physician.</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. And was there any evidence that he was 2 bleeding inside?</p> <p>3 A. On subsequent evaluation with x-rays did 4 not reveal that. He didn't have any lab work done. 5 But on exam and x-rays he was felt not to be 6 bleeding inside.</p> <p>7 Q. Were his vital signs stable?</p> <p>8 A. His vital signs were abnormal when he 9 arrived. They were repeated when his heart rate 10 dropped from 113 to 90. He had no vitals done prior 11 to discharge as would be the usual case in my 12 experience.</p> <p>13 Q. With the repeat vitals and the heart rate 14 of 90, were the vital signs within normal range?</p> <p>15 A. Yes. They were improved and normal.</p> <p>16 Q. Would it be accurate to say that you did 17 not find Mr. Dunigan to have a life threatening 18 condition from the time he came to the emergency 19 department to the time he was taken to the waiting 20 room?</p> <p>21 A. We have limited information. I don't have 22 enough information to say with confidence that he 23 didn't have a serious or life threatening problem. 24 The focused evaluation regarding his initial 25 complaint did not appear to be life threatening to</p>

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<p style="text-align: right;">Page 33</p> <p>1 the providers. I understand that.</p> <p>2 Q. Are you aware of any evidence that any of</p> <p>3 the health care providers thought that Mr. Dunigan</p> <p>4 had a life threatening condition during that time</p> <p>5 frame?</p> <p>6 A. No. I believe they did not think he had a</p> <p>7 life threatening problem. I understand that.</p> <p>8 Q. What is your understanding as to Mr.</p> <p>9 Dunigan's cause of death?</p> <p>10 A. He had a change in status after his</p> <p>11 discharge from the emergency room, and while waiting</p> <p>12 in the waiting area and during the logistics of</p> <p>13 eviction and subsequent transfer to the police</p> <p>14 vehicle and to jail. He was without vitals signs</p> <p>15 when checked at the jail and died in transit.</p> <p>16 The explanation of that I included in my</p> <p>17 report and I continue to have as my opinion is that</p> <p>18 he had multiple severe medical problems with</p> <p>19 physical and mental impairments, and that the actual</p> <p>20 cause of the death was an altered level of</p> <p>21 consciousness with several potential causes</p> <p>22 including metabolic derangements seen in diabetes</p> <p>23 and with renal failure, arrhythmia through metabolic</p> <p>24 changes in the setting of critical coronary disease,</p> <p>25 pulmonary edema and multiple drugs on board.</p>	<p style="text-align: right;">Page 35</p> <p>1 when he was due to be dialyzed.</p> <p>2 Q. What is your understanding of when Mr.</p> <p>3 Dunigan was last dialyzed?</p> <p>4 A. I don't have a precise date. He was in</p> <p>5 Borgess recently. The emergency room physician</p> <p>6 thought he just been discharged within days. There</p> <p>7 is no specific mention of when he had last been</p> <p>8 dialyzed. But he had been dialysed twice a week</p> <p>9 there. He was due to be dialyzed on the day that he</p> <p>10 died, so that would, under normal circumstances,</p> <p>11 mean he had not been dialyzed for the two preceding</p> <p>12 days at least.</p> <p>13 Q. And did you note that the history he gave</p> <p>14 was that he had been dialyzed twice that week --</p> <p>15 A. Yes.</p> <p>16 Q. -- and was scheduled later that day?</p> <p>17 A. That he got it twice at Borgess but it</p> <p>18 didn't say, to my recollection, which days that</p> <p>19 week. But in a normal circumstance, he was</p> <p>20 scheduled for Friday. And he was a three times a</p> <p>21 week dialyzed patient, so it would normally be on</p> <p>22 Monday, Wednesday, Friday.</p> <p>23 Q. That would be a reasonable conclusion from</p> <p>24 him saying he had been dialyzed twice that week and</p> <p>25 was scheduled later that day on Friday?</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. Are you able to say which of those</p> <p>2 conditions actually caused his death?</p> <p>3 A. Well, ultimately it is a cardiac arrest,</p> <p>4 cardiopulmonary arrest with arrhythmia. The only</p> <p>5 arrhythmia documented in the jail attempted</p> <p>6 resuscitation was something called pulseless</p> <p>7 electrical activity. And prior to having a monitor</p> <p>8 and the medical personnel arriving 15 minutes after</p> <p>9 his recognized loss of vitals, he had an automated</p> <p>10 electrical defibrillator applied which did not</p> <p>11 identify a shockable arrhythmia which is consistent</p> <p>12 with the pulseless electrical activity. I think</p> <p>13 that was the ultimate thing that lead to his death</p> <p>14 at that time.</p> <p>15 Q. An arrhythmia?</p> <p>16 A. It is an arrhythmia, yes. Actually it is</p> <p>17 -- there is rhythm on an electrical basis without</p> <p>18 pulse. It is a cause of the sudden death referred</p> <p>19 to as an arrhythmia.</p> <p>20 Q. Given Mr. Dunigan's history of end stage</p> <p>21 renal disease, diabetes, coronary artery disease and</p> <p>22 other cardiovascular disease, would he have been at</p> <p>23 an increased risk to suffer an arrhythmia at any</p> <p>24 time?</p> <p>25 A. Yes, particularly on the days prior to</p>	<p style="text-align: right;">Page 36</p> <p>1 A. I am not sure he said twice that week. I</p> <p>2 thought he said he had it twice at Borgess. He may</p> <p>3 have said twice that week but I think that is a</p> <p>4 reasonable scheduling interval. He would not</p> <p>5 normally be dialyzed on Sunday.</p> <p>6 Q. And not to quibble with the facts, but if</p> <p>7 you assume that the emergency department report by</p> <p>8 Dr. Rigot says, under history of present illness,</p> <p>9 patient admitted discharged from Borgess recently,</p> <p>10 had dialysis twice this week while there. Scheduled</p> <p>11 dialysis tomorrow, open paren, Friday, close paren,</p> <p>12 would it be reasonable from that history to assume</p> <p>13 that he had dialysis twice that week and was</p> <p>14 scheduled to have it again that same day, later in</p> <p>15 the day on Friday?</p> <p>16 A. Yes. Thank you for clarifying that week,</p> <p>17 but when he says he is due to have it tomorrow, it</p> <p>18 is always a question in the middle of the night what</p> <p>19 you call which day. Is that the same day he was</p> <p>20 being seen between 2:00 and 4:00 a.m.</p> <p>21 Q. So given that uncertainty, is it correct</p> <p>22 it would be appropriate for the person taking the</p> <p>23 history to specifically note that tomorrow meant</p> <p>24 Friday because the patient was being seen in the</p> <p>25 middle of the night or early in the morning on</p>

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<p style="text-align: right;">Page 37</p> <p>1 Friday?</p> <p>2 A. Yes. It is a common way to refer to</p> <p>3 things. If you see somebody at 3:00 in the morning</p> <p>4 is it then tomorrow or today. It is, I think it was</p> <p>5 that he was due to be dialyzed on Friday, and that</p> <p>6 would have been a typical schedule.</p> <p>7 Q. And to clarify, he was seen around --</p> <p>8 between 2:30 and 4:00 o'clock on May 6th, which was</p> <p>9 a Friday?</p> <p>10 A. Yes, the same day.</p> <p>11 Q. I can't recall if you answered my previous</p> <p>12 question. I apologize but I am going to ask it</p> <p>13 again.</p> <p>14 Based upon the history we just went over,</p> <p>15 it would have been reasonable for the history taker</p> <p>16 to assume that the patient had been dialyzed already</p> <p>17 twice that week and was scheduled to be dialyzed</p> <p>18 again later that same day?</p> <p>19 A. Yes.</p> <p>20 MR. HARRINGTON: Objection to foundation.</p> <p>21 Q. (By Mr. O'Loughlin) And the answer was?</p> <p>22 A. Yes.</p> <p>23 Q. In your report from October 25, 2017,</p> <p>24 under further inspections, you state that Mr.</p> <p>25 Dunigan was clearly impaired while in the Bronson</p>	<p style="text-align: right;">Page 39</p> <p>1 brought with him and was in the EMT equipment that</p> <p>2 was brought with him. It was said that the day</p> <p>3 before when he fell, he fell in the setting of</p> <p>4 getting either on or off the bus and fell to the</p> <p>5 ground. There was one mention that he was dizzy.</p> <p>6 It is not clear that he was dizzy when he was in the</p> <p>7 emergency room but his ambulation was not normal at</p> <p>8 a base line.</p> <p>9 He was said to have been able to get up</p> <p>10 from the EMT gurney to get to his emergency room bed</p> <p>11 and from the emergency room bed to the wheelchair</p> <p>12 when discharged. Those are different from the way</p> <p>13 he appears on the video of the all night stay in the</p> <p>14 emergency room waiting room.</p> <p>15 Q. How are they different? Let me go back.</p> <p>16 I will withdraw that.</p> <p>17 You saw the video from the waiting room?</p> <p>18 A. I did.</p> <p>19 Q. Correct? And you saw Mr. Dunigan wheeled</p> <p>20 in by the nurse Dennis Watson, correct?</p> <p>21 A. After discharge.</p> <p>22 Q. You saw Mr. Dunigan wheeled in, in the</p> <p>23 wheelchair by emergency department nurse Watson, by</p> <p>24 wheeled in, I mean from the emergency department to</p> <p>25 the waiting room?</p>
<p style="text-align: right;">Page 38</p> <p>1 Hospital ER waiting area.</p> <p>2 Upon what do you base that opinion?</p> <p>3 A. We have a video of the entire time in the</p> <p>4 Bronson Methodist Hospital emergency room. He was</p> <p>5 unable to support himself without assistance either</p> <p>6 with his cane or holding onto multiple pieces of</p> <p>7 furniture, the chairs in the emergency room. And he</p> <p>8 was referred to by the Bronson security people as</p> <p>9 being fine and walking about without assistance at</p> <p>10 that time. That is not borne out by the video tape.</p> <p>11 And he appeared to be significantly impaired with</p> <p>12 ambulation at that time.</p> <p>13 He subsequently, while still in the</p> <p>14 emergency room, was asked to stand and fell forward</p> <p>15 to other chairs, and then required assistance into a</p> <p>16 wheelchair, and then assistance with the wheelchair</p> <p>17 out to the area outside the emergency room where he</p> <p>18 was unable to stand and was lowered to the pavement</p> <p>19 at that time. Those, to me, suggest that he was</p> <p>20 severely impaired while at Bronson after discharge.</p> <p>21 Q. What was Mr. Dunigan's base line</p> <p>22 ambulatory status, in other words, the day before,</p> <p>23 how was he ambulating?</p> <p>24 A. He had a previous stroke and had some</p> <p>25 weakness on his left side and had a cane that he had</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes.</p> <p>2 Q. And that is from the video, right?</p> <p>3 A. Yes.</p> <p>4 Q. And you saw him while he was sitting in</p> <p>5 the wheelchair put on a -- some sort of jacket or</p> <p>6 other piece of clothing?</p> <p>7 A. Yes.</p> <p>8 Q. You saw him get up on his own, no one else</p> <p>9 there, from the wheelchair and move to a seat in the</p> <p>10 waiting room?</p> <p>11 A. Right.</p> <p>12 MR. HARRINGTON: Form and foundation.</p> <p>13 Q. (By Mr. O'Loughlin) I don't know if you</p> <p>14 recall my question, Doctor?</p> <p>15 A. I don't. You answered and I didn't hear.</p> <p>16 MR. HARRINGTON: I objected. I placed an</p> <p>17 objection, Jack, so I don't know if that was cut off</p> <p>18 or not.</p> <p>19 Q. (By Mr. O'Loughlin) Let me try it again</p> <p>20 just in case, and subject to the objection.</p> <p>21 You saw in the video that Mr. Dunigan was</p> <p>22 able by himself without any assistance from anyone</p> <p>23 else and without anyone else in the area get up from</p> <p>24 the wheelchair and move to a chair in the waiting</p> <p>25 room, true?</p>

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<p style="text-align: right;">Page 41</p> <p>1 A. Right. But the fact that he didn't have 2 assistance from another person doesn't mean that it 3 is unassisted. He uses the chairs, the wheelchair 4 arm, the cane and the chairs in the emergency room 5 then and repeatedly throughout the night to assist 6 him mechanically, not assist him with another 7 person. 8 Q. And repeatedly throughout the night while 9 he is in the waiting room and on that surveillance 10 video, he moves to different chairs throughout the 11 waiting room, true? 12 A. Several times, yes. 13 Q. Without anyone assisting him, true? 14 A. True. But with the assistance of the 15 furniture and/or cane. 16 Q. Are you able to offer an opinion as to 17 whether his ambulation in the waiting room up to the 18 time he was asked to leave was any different than 19 his base line? 20 A. It was clearly very abnormal. And it was 21 said by the nurses who testified about his moving 22 from the gurney of the EMTs with which he arrived to 23 his ER bed to the wheelchair, that he was able to do 24 so independently. 25 When the police officers asked him to</p>	<p style="text-align: right;">Page 43</p> <p>1 foundation. He is able to make reasonable 2 impression. 3 THE WITNESS: I do have an impression that 4 he was different because of the descriptions by the 5 experienced health care providers and then by 6 comparing that to the video. I think he was worse. 7 Q. (By Mr. O'Loughlin) What description by 8 any health care providers are you relying on? 9 A. The nurse's depositions. 10 Q. And what specific statement? 11 A. That he was able to get up on his own 12 between the gurney and the bed and then the bed and 13 the wheelchair. That is my recollection. 14 Q. Okay. Did you see on the video that he 15 was also able to get up from his wheelchair and the 16 chairs in the waiting room and then several more 17 times in the different chairs in the waiting room in 18 the few hours up until he had to leave? 19 MR. HARRINGTON: Objection. Form and 20 foundation. 21 THE WITNESS: As I said with the 22 mechanical assistance of his cane and the furniture. 23 Q. (By Mr. O'Loughlin) What makes you think 24 that is any different from the way he got to the EMT 25 gurney to the emergency room bed and from the</p>
<p style="text-align: right;">Page 42</p> <p>1 stand and leave in the early morning hours several 2 hours later, he fell forward against the other 3 chairs and was clearly not able to ambulate at that 4 time. So that ambulation test, if you will, 5 demonstrated to me that he was different from his 6 base line, and he was in no condition to walk out to 7 the bus stop and leave. 8 Q. Perhaps my question wasn't clear. Let me 9 try it again. 10 Do you have an opinion whether Mr. 11 Dunigan's ambulation around the waiting room moving 12 from chair to chair up to the time he was asked to 13 leave was any different than his base line? 14 A. I can't tell. I have no video of what he 15 was like before. I just have the description that 16 he could move between those three modes of 17 transportation, according to the nurse, in a way 18 that they thought was normal. He clearly wasn't 19 normal when he was going between the chairs or 20 afterwards, but I don't have any video to verify 21 what he was like in the ER. 22 Q. Is it fair to say then you can't say Mr. 23 Dunigan's ambulation around the ER was any different 24 than his base line? 25 MR. HARRINGTON: Objection to form and</p>	<p style="text-align: right;">Page 44</p> <p>1 emergency room bed to the wheelchair? 2 A. Because of their descriptions. That is 3 all I have. 4 Q. You have to tell me -- well, none of the 5 nurses said that he didn't use the cane or hold onto 6 things as he moved from the bed to the wheelchair or 7 the bed to the bed, did they? 8 A. I am not sure they were ever asked that. 9 They just said he was able to get up on his own 10 between those places. 11 Q. Correct. Meaning that they didn't feel a 12 need to assist him, that was their testimony. 13 A. That is part of it. They thought he was 14 independently doing fine. That is not the 15 impression I have when he is in the emergency room 16 waiting area and particularly after the police 17 interview him. 18 Q. But I am talking about up to until the 19 time he is asked to leave? 20 A. Right. 21 MR. HARRINGTON: Are you at a point where 22 we take a break, Jack, or are you in thought? 23 MR. O'LOUGHLIN: I am in thought but that 24 doesn't mean we can't take a break. 25 (A break was taken in the deposition after</p>

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<p style="text-align: right;">Page 45</p> <p>1 which the following proceedings were held:)</p> <p>2 Q. (By Mr. O'Loughlin) We can go back on the</p> <p>3 record.</p> <p>4 Doctor, from your review of the video or</p> <p>5 any other information that you have relating to this</p> <p>6 case, are you aware of any evidence that Mr. Dunigan</p> <p>7 after he is taken to the waiting room was ever asked</p> <p>8 to be seen again by a health care professional?</p> <p>9 A. People have said he did not, and there was</p> <p>10 no indication. On the films I had, it was all</p> <p>11 visual, not audio, but I have no indication that he</p> <p>12 did ask to be seen again.</p> <p>13 Q. You would agree that Mr. Dunigan in the</p> <p>14 waiting room up until the time he was asked to leave</p> <p>15 was able to ambulate without the assistance of any</p> <p>16 other person?</p> <p>17 MR. HARRINGTON: Objection to form and</p> <p>18 foundation.</p> <p>19 THE WITNESS: Yes. He required mechanical</p> <p>20 assistance from his cane and furniture but there</p> <p>21 were no other personnel assisting him.</p> <p>22 Q. (By Mr. O'Loughlin) Doctor, from your</p> <p>23 review of the video in the waiting room up until the</p> <p>24 time he was asked to leave, did you make an opinion</p> <p>25 as to whether Mr. Dunigan exhibited any difficulty</p>	<p style="text-align: right;">Page 47</p> <p>1 or the police officers about any medical problems?</p> <p>2 A. They said that he did not. That is the</p> <p>3 information I have. The only time he made a comment</p> <p>4 that was worrisome is when they wanted him to stand</p> <p>5 up, and he said that his legs weren't ready and he</p> <p>6 could not stand.</p> <p>7 Q. Up to that point had you seen or heard</p> <p>8 anything, or are you aware of any evidence that Mr.</p> <p>9 Dunigan ever complained of any medical condition or</p> <p>10 asked for care for any medical treatment?</p> <p>11 A. I am not aware of a request or a</p> <p>12 complaint.</p> <p>13 Q. Are you aware of any time after he went to</p> <p>14 the waiting room that Mr. Dunigan again presented to</p> <p>15 the emergency department seeking care for a medical</p> <p>16 condition?</p> <p>17 A. That is to me the same question. He did</p> <p>18 not as far as I know.</p> <p>19 Q. Up to the time that Mr. Dunigan was placed</p> <p>20 in the police car, are you aware of any evidence</p> <p>21 that he experienced any respiratory distress?</p> <p>22 A. No. I am not aware of any respiratory</p> <p>23 distress. Unfortunately, the video of his upper</p> <p>24 body is blocked by the trauma emergency room sign</p> <p>25 but I have no information about respiratory</p>
<p style="text-align: right;">Page 46</p> <p>1 or distress?</p> <p>2 A. He was in not in obvious distress. He was</p> <p>3 somnolent and sleeping with diminished level of</p> <p>4 consciousness much of the time, but there was no</p> <p>5 obvious distress to my review. And there was no</p> <p>6 disruptive behavior.</p> <p>7 Q. I am sorry. But from your review of that</p> <p>8 video up until the time he was asked to leave, did</p> <p>9 it appear that Mr. Dunigan was at times trying to</p> <p>10 sleep in chairs or a chair in different locations?</p> <p>11 MR. HARRINGTON: Object to form and</p> <p>12 foundation.</p> <p>13 THE WITNESS: That appeared to be the</p> <p>14 case. He would move from one single chair to a</p> <p>15 double chair and put his leg up over the rails and</p> <p>16 had his head down. It didn't look like he slept</p> <p>17 much because he was periodically moving to try to</p> <p>18 get more comfortable, it looked like.</p> <p>19 Q. (By Mr. O'Loughlin) Would you consider</p> <p>20 that normal behavior for anybody attempting to sleep</p> <p>21 in chairs in a waiting room, or an airport or any</p> <p>22 place like that?</p> <p>23 A. I think it is common behavior, yes.</p> <p>24 Q. Are you aware of any evidence that Mr.</p> <p>25 Dunigan ever made a complaint to security officers</p>	<p style="text-align: right;">Page 48</p> <p>1 distress.</p> <p>2 Q. Up to the time he was placed in the police</p> <p>3 car, are you aware of any evidence indicating that</p> <p>4 Mr. Dunigan lost consciousness?</p> <p>5 A. Only the diminished level of consciousness</p> <p>6 associated with sleep is what I am aware of.</p> <p>7 Q. Okay. Up to the time he was placed in the</p> <p>8 police car, are you aware of any evidence that Mr.</p> <p>9 Dunigan was obtunded, O-B-T-U-N-D-E-D?</p> <p>10 A. Again, it is an interpretation of someone</p> <p>11 who has diminished level of consciousness. I</p> <p>12 thought he was most likely asleep, not obtunded.</p> <p>13 Obtunded to me means he is unarousable, but if no</p> <p>14 one is checking I can't tell what his real level of</p> <p>15 consciousness is.</p> <p>16 Q. Are you aware of evidence that he was</p> <p>17 speaking with the security officers and the police</p> <p>18 officers?</p> <p>19 A. He did speak some. They said he was</p> <p>20 mumbling a lot. The main thing I recall is when</p> <p>21 they asked him to leave, he asked to be taken to</p> <p>22 jail. I guess that was interpretable because it was</p> <p>23 also overheard by people at the triage registration</p> <p>24 desk.</p> <p>25 Q. You would not interpret that statement as</p>

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<p style="text-align: right;">Page 49</p> <p>1 a request for medical care, would you?</p> <p>2 A. No.</p> <p>3 Q. In your report from October you made</p> <p>4 reference to security officer Shoemaker making the</p> <p>5 remarks indicating that he thought Mr. Dunigan was</p> <p>6 quote, faking, quote, or, quote, playing games,</p> <p>7 close quote, and making insulting comments of,</p> <p>8 quote, bullshit, close quote, and quote, fucking</p> <p>9 stupid, close quote, regarding Mr. Dunigan's</p> <p>10 behavior in your report?</p> <p>11 A. Yeah. That is what he said.</p> <p>12 Q. Are you aware of any evidence that Mr.</p> <p>13 Shoemaker or any other Bronson security guard or any</p> <p>14 police officers ever thought that Mr. Dunigan was</p> <p>15 suffering from a serious medical condition up to the</p> <p>16 time he arrived at the jail?</p> <p>17 A. Before they put him in the car is when the</p> <p>18 Bronson security people were involved. They had to</p> <p>19 physically lift him with three people. That is when</p> <p>20 they called him faking and playing games and</p> <p>21 insulting comments about acting like a man and</p> <p>22 bullshit, and fucking stupid, certainly not things</p> <p>23 that suggest that they thought he was seriously ill</p> <p>24 but they were certainly giving him no benefit of the</p> <p>25 doubt when he said he couldn't walk and his legs</p>	<p style="text-align: right;">Page 51</p> <p>1 security guards or Officers Nugent and Shaffer had</p> <p>2 actually believed that Mr. Dunigan needed medical</p> <p>3 attention at any time before he arrived at the jail?</p> <p>4 A. Well, the two police officers four blocks</p> <p>5 from the ER, what they said it was one minute away,</p> <p>6 noticed that he was having distress with his</p> <p>7 breathing, was still slumped down behind the seat in</p> <p>8 the back against the cage and had snoring</p> <p>9 respirations and foaming at the mouth. They were</p> <p>10 sufficiently concerned to stop and spend four</p> <p>11 minutes of doing an assessment, inadequate in my</p> <p>12 opinion, but left them with the impression that he</p> <p>13 was still faking. By the time they got to the jail</p> <p>14 several minutes later he was dead. They clearly had</p> <p>15 an indication that there was a change in his status</p> <p>16 for the worst. He was not responsive. They put a</p> <p>17 flashlight in his eyes and said he blinked. A</p> <p>18 flashlight in the eyes is usually used to assess</p> <p>19 pupils. There was no verbal interaction from him.</p> <p>20 He appeared to be severely impaired on the film and</p> <p>21 that is what they responded to. So I think there</p> <p>22 was a significant concern about his change in status</p> <p>23 at that time. They ended up saying he was okay and</p> <p>24 faking. Clearly, they were wrong.</p> <p>25 Q. Do you recall my question?</p>
<p style="text-align: right;">Page 50</p> <p>1 weren't ready and he was laying on the concrete.</p> <p>2 They stand around and watch him, four or five of</p> <p>3 them, until the three of them have to lift him into</p> <p>4 the car. Certainly very worrisome behavior for</p> <p>5 people who are there to protect your safety and not</p> <p>6 treating him with even minimum respect.</p> <p>7 Q. I will come back to my question, but from</p> <p>8 what you just said, are those opinions that you</p> <p>9 consider to be medical opinions or expert opinions?</p> <p>10 A. They are common sense opinions.</p> <p>11 Q. You don't need an expert to make that sort</p> <p>12 of judgment, do you?</p> <p>13 A. I don't think so. I think anybody that</p> <p>14 looks at those tapes and their behavior and the</p> <p>15 transcript of what they said would be appalled by</p> <p>16 these said to be professional, well-trained people</p> <p>17 with experience. It is awful.</p> <p>18 Q. Thank you for that opinion. Is that an</p> <p>19 expert opinion?</p> <p>20 A. Sure. As well as a common sense opinion.</p> <p>21 Q. Now let me go back to the question I</p> <p>22 thought I had asked earlier. If not, I apologize.</p> <p>23 Are you aware of any evidence or anything</p> <p>24 you reviewed or know about this case which would</p> <p>25 indicate that Mr. Shoemaker or any of the other</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Yes.</p> <p>2 Q. The question is whether you are aware of</p> <p>3 any evidence in this case indicating that the</p> <p>4 security guards or the police officers ever actually</p> <p>5 believed or recognized that Mr. Dunigan had a</p> <p>6 significant health problem up to the time he arrived</p> <p>7 at the jail?</p> <p>8 A. That is what I just described to you, that</p> <p>9 they did recognize it. Shaffer is an EMT. He has</p> <p>10 been a cop for more than ten years. He clearly</p> <p>11 recognized there was a problem and then decided that</p> <p>12 he was faking. Clearly he did not do any detailed</p> <p>13 assessment of a first responder or EMT or any other</p> <p>14 professional. He later said he thought he was</p> <p>15 faking. All you have to do is look at the tape.</p> <p>16 Q. Let me try it again. Let me just preface</p> <p>17 this, if the security officers and the police</p> <p>18 officers thought Mr. Dunigan was faking, would you</p> <p>19 agree that they did not recognize or appreciate that</p> <p>20 he had any serious medical problems?</p> <p>21 MR. HARRINGTON: Objection to form and</p> <p>22 foundation.</p> <p>23 THE WITNESS: Yes. I think they thought</p> <p>24 he was faking without doing any assessment. Several</p> <p>25 of them had no idea why he had been there and did</p>

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<p style="text-align: right;">Page 53</p> <p>1 not appreciate his distress as demonstrated by his</p> <p>2 inability to walk or stand.</p> <p>3 Q. (By Mr. O'Loughlin) Let me try it one</p> <p>4 more time, maybe one we will try to get a straight</p> <p>5 answer.</p> <p>6 A. I have answered it five times so far.</p> <p>7 Q. Are you aware of any evidence based upon</p> <p>8 your review of everything you have seen in this case</p> <p>9 indicating that the Bronson security officers or the</p> <p>10 police officers ever actually believed that Mr.</p> <p>11 Dunigan had a serious medical problem --</p> <p>12 A. And I repeat the same.</p> <p>13 Q. -- up to the time he arrived at the jail?</p> <p>14 A. Exactly the same thing I have said before.</p> <p>15 They pulled the car over because he was having</p> <p>16 respiratory difficulties, foaming at the mouth,</p> <p>17 limited responsiveness and slumped down into the</p> <p>18 area behind the seat. That is all the same event.</p> <p>19 And if you would like I can describe it again. That</p> <p>20 is a recognition that he had a problem. Why else</p> <p>21 would they have stopped the car? They were</p> <p>22 concerned about him. They checked him minimally and</p> <p>23 then decided to proceed on after having to</p> <p>24 physically lift him up onto the seat in the back of</p> <p>25 the police car.</p>	<p style="text-align: right;">Page 55</p> <p>1 they believed is what they say. On the tapes until</p> <p>2 he gets into the car, I have no audio to hear. They</p> <p>3 are talking about wanting to hit the brakes on the</p> <p>4 wheelchair so he would get dumped on the concrete.</p> <p>5 They don't help him up when he is lying on the</p> <p>6 concrete for several minutes until they load him</p> <p>7 into the car with three people carrying him. They</p> <p>8 say that they think he is faking. They think he is</p> <p>9 playing the game. They are doing no assessment.</p> <p>10 They are -- in the waiting room they are 15 feet</p> <p>11 from the triage nurse. Outside, they are probably</p> <p>12 30 feet from it. They never considered taking him</p> <p>13 back inside. So I don't think they thought he had</p> <p>14 anything. They thought he was faking based on a</p> <p>15 totally inadequate evaluation.</p> <p>16 Q. That is exactly my question, Doctor. I</p> <p>17 wish you would just answer.</p> <p>18 Based on everything you know about this</p> <p>19 case, do you believe that the security officers and</p> <p>20 the police officers believed Mr. Dunigan was faking</p> <p>21 and did not really have a serious medical condition?</p> <p>22 A. For the tenth time, that is what I have</p> <p>23 said.</p> <p>24 Q. I would submit that it was not. But you</p> <p>25 do agree now that you are not aware of any evidence</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. All right. Let's go up to that point and</p> <p>2 try to get an answer here. Up to the point where</p> <p>3 they stopped the car, are you aware of any evidence</p> <p>4 that either the security officers or the police</p> <p>5 officers believed that Mr. Dunigan had a serious</p> <p>6 health medical problem?</p> <p>7 A. They said they didn't believe he did. I</p> <p>8 have trouble with the man who is holding his head, I</p> <p>9 believe it is Officer Carlisle, while he is having</p> <p>10 snoring and foaming at the mouth, while they are</p> <p>11 having to lift him into the car and saying, oh, he</p> <p>12 is fine. He is -- all the officers say they didn't</p> <p>13 think he had anything. They thought he was faking.</p> <p>14 They were clearly wrong.</p> <p>15 Q. And they may have been wrong, Doctor. I</p> <p>16 can't believe it is this hard to have a</p> <p>17 conversation. Do you understand I am asking about</p> <p>18 evidence of what they actually believed as opposed</p> <p>19 to what you think they should have recognized or</p> <p>20 picked up?</p> <p>21 MR. HARRINGTON: Jack, please don't argue</p> <p>22 with the witness. He is answering your questions.</p> <p>23 MR. O'LOUGHLIN: I would assert that he is</p> <p>24 not.</p> <p>25 THE WITNESS: The only way I can tell what</p>	<p style="text-align: right;">Page 56</p> <p>1 indicating that even the security officers or the</p> <p>2 police officers actually recognized that Mr. Dunigan</p> <p>3 had a serious medical condition, true?</p> <p>4 A. No, I think in the police car when they</p> <p>5 pulled over and stopped they recognized that he had</p> <p>6 a serious problem. They want to talk about and say</p> <p>7 that he was faking. They stopped for a reason.</p> <p>8 Q. And would you agree based upon review of</p> <p>9 the video and all the testimonial evidence in the</p> <p>10 case that after they investigated they did believe</p> <p>11 he was faking and did not believe he had a serious</p> <p>12 medical condition?</p> <p>13 A. While he was dying, that is true.</p> <p>14 Q. You made reference, I believe, to Mr.</p> <p>15 Carlisle?</p> <p>16 A. Mr. Carlisle is one of the security</p> <p>17 officers from Bronson who helped put him in the car.</p> <p>18 He had the head end from my view on the left</p> <p>19 driver's side rear door.</p> <p>20 Q. Correct. You in your earlier testimony</p> <p>21 suggested that at that time Mr. Dunigan was foaming</p> <p>22 at the mouth?</p> <p>23 A. I couldn't see that but that was the</p> <p>24 testimony of the officers involved.</p> <p>25 Q. As to when?</p>

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<p style="text-align: right;">Page 57</p> <p>1 A. At the time when they put him in the car. 2 I am not talking about the time when they stopped 3 the car enroute. Before they took off, that was the 4 testimony. 5 Q. If that wasn't their testimony and that is 6 not depicted on the video, would you have any 7 evidence indicating that Mr. Dunigan was ever, as 8 you put it, foaming at the mouth at any time while 9 he was on Bronson premises? 10 A. I can't see his head when he is being 11 loaded into the car. And it is their testimony. 12 Hypothetically, if it weren't, I would have no 13 basis. 14 MR. VANDERLAAN: I move to strike the 15 Doctor's testimony because the officers never 16 testified that he was foaming at the mouth. 17 THE WITNESS: No, the security officers 18 said he was foaming at the mouth, not the police 19 officers. They didn't help him into the car. 20 Q. (By Mr. O'Loughlin) What security officer 21 do you believe said they saw Mr. Dunigan foaming at 22 the mouth? 23 A. I can look. It is in their depositions. 24 Do you want me to look? 25 Q. It is a pretty important point, so, yes, I</p>	<p style="text-align: right;">Page 59</p> <p>1 they are loading him in the car. Those are the 2 sequential quotes. I may be wrong that he is 3 talking about something he observed, and that it is 4 a hypothetical based on his EMT training but that is 5 the way I interpreted it. 6 Q. Aside from the testimony you just read, 7 any other indication or evidence that you are aware 8 of that Mr. Dunigan either had snoring respirations 9 or foaming at the mouth at any time while he was on 10 Bronson premises? 11 A. No. That is the only reference to it I 12 saw. 13 Q. All right. From your review of the video 14 and testimony, did you see Mr. Dunigan do anything 15 up until he was placed in the police car that would 16 be inconsistent with him simply being uncooperative? 17 A. Yes. His physical condition. He was 18 staggering when asked to get up in the emergency 19 room waiting room. He had to have two people assist 20 him into the wheelchair. And when asked to stand 21 from the wheelchair required two people to lower him 22 to the ground on the concrete out in front. That 23 is -- that's from the video. And I have no audio to 24 go with it. There were four, I think five people 25 with him outside who then just stood around and</p>
<p style="text-align: right;">Page 58</p> <p>1 need you to tell me where that is because my 2 recollection is just exactly the opposite. 3 A. So the place where I am looking is on 4 Charles Shoemaker, the deposition, page 34 and 35. 5 They are talking about loading him in the car. 6 Were you with him when he was loaded into 7 the car? 8 ANSWER: Yes, I had his feet. Art, that 9 would be Carlisle, went around the driver's side and 10 helped him, getting him by the shoulders to sit up. 11 Next question has to do with real quick 12 when you say snoring respirations in any of your EMT 13 training what is that significance of? 14 Respiratory failure could lead up to -- 15 trouble breathing, I should say. 16 And then on page 35, it said: If none of 17 those signs of his snoring respirations were present 18 when you were dealing with Mr. Dunigan as depicted 19 in Exhibit 14, and then you started -- and then they 20 started to develop when he was out by the car, at 21 that time is a definite change in his condition? 22 Correct. 23 So to me they are talking about his 24 snoring respirations when he is out by the car which 25 Shoemaker says is a change in his condition while</p>	<p style="text-align: right;">Page 60</p> <p>1 looked at him. 2 Q. How do any of those things you just 3 mentioned indicate that he was anything other than 4 simply uncooperative? 5 A. To me, falling to the ground is not what I 6 would call uncooperative. Uncooperative may be 7 something where he was disruptive or refusing to do 8 something with the police. The only thing he 9 refused to do was to leave, and it appears to me 10 that he was physically incapable of it. 11 There is no disruptive behavior. There is 12 no -- someone referred to as he had a mild push 13 against one officer. It looked to me like he was 14 falling over and they grabbed him. I don't see any 15 pushing or things that I would call disruptive that 16 would be a much more common reason to evict someone 17 with the police. 18 Q. You would agree if he refused to leave the 19 premises when asked to leave would be uncooperative? 20 A. Yes. 21 MR. HARRINGTON: Objection to form and 22 foundation, vague. 23 Q. Your answer was yes? 24 A. Yes. I think it is uncooperative. I 25 don't think it is disruptive or anything but</p>

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<p style="text-align: right;">Page 61</p> <p>1 verbally saying that that he was not in any physical 2 condition to go. His legs weren't ready. 3 Q. Would you agree that laying on the floor 4 or laying on the ground and refusing to get up would 5 be uncooperative? 6 A. It is not -- 7 MR. HARRINGTON: Object to foundation. 8 THE WITNESS: It is not uncooperative. It 9 is a demonstration that he is in need of attention 10 that is 15 feet away. He didn't lie on the ground 11 as a demonstrator in front of the White House. He 12 was lying on the ground because he can't get up. 13 Q. (By Mr. O'Loughlin) How would it look 14 different than when he is lying on the ground 15 because he didn't want to get up and didn't want to 16 leave? 17 A. You have to give him the benefit of the 18 doubt. If you can't tell the difference, you just 19 let the medical professionals who have just 20 evaluated him see him again. There was no urgency 21 on the part of anything they did but take him in. 22 There was no rush to get him to jail. 23 Q. Do you recall my question? 24 A. I thought I answered it. 25 Q. How would it look different if Mr. Dunigan</p>	<p style="text-align: right;">Page 63</p> <p>1 to do. 2 MR. HARRINGTON: No, it is not, so 3 continue please. 4 MR. VANDERLAAN: It is yes or no question. 5 He is not answering. 6 MR. HARRINGTON: No, you can't limit his 7 answer to a yes or no. He is allowed a reasonable 8 explanation to his answer. You can't limit what his 9 answers are going to be. 10 Q. (By Mr. O'Loughlin) Doctor, based upon 11 your review of the Bronson surveillance video or 12 anything else you saw in this case, was there any 13 evidence that Mr. Dunigan was anything other than 14 alert and oriented up to the time when he was placed 15 in the police car? 16 A. Well, there is no audio component to the 17 tapes, the nine video tapes that I reviewed. There 18 is no indication that he was alert or oriented. He 19 was said to be mumbling and he asked to go to jail 20 which was an unusual request for someone who had 21 been in seeking medical attention. 22 There is no assessment of his orientation, 23 which would be a commonly done series of simple 24 questions best done by the medical personnel 25 immediately nearby. So, to me, he is not alert or</p>
<p style="text-align: right;">Page 62</p> <p>1 was laying on the ground because he was refusing to 2 get up as opposed to laying on the ground because he 3 was unable to get up? 4 A. You have to interact with him and ask him. 5 If you didn't feel were you medically capable of 6 assessing, you have got the people right there. You 7 don't just stand and look at him, stare at him and 8 guess that he is faking it, not even knowing why he 9 was there. Unacceptable. 10 Q. Do you recall my question? 11 A. Sure. 12 Q. Do you recall my question? 13 A. Sure. How many times do you want to me to 14 answer each of these questions? 15 Q. I would like an answer once. 16 MR. HARRINGTON: Stop arguing. Counsel, 17 he is answering your questions just because you 18 didn't like the answer doesn't mean you can ask it 19 six times until you get what you like. He is 20 answering your questions. 21 MR. O'LOUGHLIN: I would be happy to have 22 the judge decide whether that is the case. 23 MR. HARRINGTON: That's fine, just don't 24 argue and ask your question. 25 MR. O'LOUGHLIN: That is what I am trying</p>	<p style="text-align: right;">Page 64</p> <p>1 oriented unless you inquire and do the assessment, 2 and no assessment was done. 3 Q. Given the absence of an assessment, would 4 you agree that there is no evidence that Mr. Dunigan 5 was not alert and oriented based up to the time he 6 was placed in the police car? 7 MR. HARRINGTON: Objection to form and 8 foundation? 9 THE WITNESS: Well, there is the testimony 10 I just commented on that they found him to be 11 mumbling and unable to stand. That is not alert and 12 oriented. There is no assessment despite having 13 qualified medical people who knew him and knew his 14 situation immediately available. 15 Q. Anything that is not -- first of all, did 16 anybody testify that Mr. Dunigan was unable to stand 17 as opposed to refusing to stand? 18 A. It is in the video. He collapses and they 19 lowered him to the ground. The obligation of a 20 professional is to give him the benefit of the doubt 21 that when he says my legs aren't ready, and that he 22 collapses to the ground, that there is something 23 wrong. They all say hypothetically, if they saw 24 something based on interpretation that something is 25 wrong they would take him back in. I can't</p>

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<p style="text-align: right;">Page 65</p> <p>1 understand why they didn't interpret it that way.</p> <p>2 Q. But you are concerned that they didn't</p> <p>3 interpret it that way, true?</p> <p>4 A. Why else would he have called himself a</p> <p>5 scape goat from the security guards in regards to</p> <p>6 the police officers' testimony that he was</p> <p>7 sandbagged by information that was inaccurate.</p> <p>8 Shoemaker said he was up walking around without</p> <p>9 assistance. Shoemaker wasn't even there.</p> <p>10 Q. Do you recall my question?</p> <p>11 A. Yes.</p> <p>12 Q. Would you answer it please?</p> <p>13 A. I just did.</p> <p>14 MR. HARRINGTON: Asked and answered.</p> <p>15 Q. (By Mr. O'Loughlin) My question was, I</p> <p>16 believe, Doctor, I heard you are concerned that</p> <p>17 neither the security officers nor the police</p> <p>18 officers believed and recognized that Mr. Dunigan</p> <p>19 was in -- had some serious medical problem?</p> <p>20 A. What's the question? There was no</p> <p>21 question in that.</p> <p>22 Q. Do you agree -- you would agree that</p> <p>23 neither the security officers nor the police</p> <p>24 officers actually recognized that Mr. Dunigan had</p> <p>25 any sort of medical problem, true?</p>	<p style="text-align: right;">Page 67</p> <p>1 follow directions. I have no indications he did</p> <p>2 not.</p> <p>3 Q. Was Mr. Dunigan, as a presumed reasonable</p> <p>4 person, obligated to advise someone if he was having</p> <p>5 a severe medical problem?</p> <p>6 A. If he was capable of it, yes.</p> <p>7 Q. And was able to do so?</p> <p>8 A. Right. If he was capable of it.</p> <p>9 Q. Based upon your review, are you aware of</p> <p>10 whether Mr. Dunigan was compliant with his</p> <p>11 recommended dialysis schedule?</p> <p>12 A. There are references in the Borgess record</p> <p>13 that he, at times, was not compliant with his</p> <p>14 dialysis schedule or other things.</p> <p>15 Q. Do you agree that he did have end of stage</p> <p>16 renal disease?</p> <p>17 A. Yes.</p> <p>18 Q. Probably to effect the result of not</p> <p>19 complying with a dialysis schedule to be with a</p> <p>20 patient with end stage renal disease?</p> <p>21 A. He was still making urine and taking</p> <p>22 diuretics, and it is not clear what the consequences</p> <p>23 of skipping a dialysis session were in those</p> <p>24 records.</p> <p>25 Q. Are you talking in general that would</p>
<p style="text-align: right;">Page 66</p> <p>1 A. I think they did not recognize it.</p> <p>2 Q. You think they did not recognize it, is</p> <p>3 that what you said?</p> <p>4 A. Yes. I have said that right along.</p> <p>5 Q. In your expert opinion, did Mr. Dunigan</p> <p>6 have any responsibility for the events in this case?</p> <p>7 MR. HARRINGTON: Objection to form and</p> <p>8 foundation, broad, vague, ambiguous.</p> <p>9 THE WITNESS: I think he is not the</p> <p>10 responsible party.</p> <p>11 Q. (By Mr. O'Loughlin) Based upon all you</p> <p>12 have reviewed, you are of the opinion Mr. Dunigan is</p> <p>13 not responsible for any of the events in this case?</p> <p>14 MR. HARRINGTON: Objection to form and</p> <p>15 foundation. I am sorry, counsel, it is really,</p> <p>16 really broad. I don't know what you mean.</p> <p>17 THE WITNESS: There are a lot of events,</p> <p>18 what time are you talking about?</p> <p>19 Q. (BY Mr. O'Loughlin) Was Mr. Dunigan</p> <p>20 obligated in your opinion to provide an accurate</p> <p>21 medical history in the emergency room?</p> <p>22 A. Yes.</p> <p>23 Q. Was Mr. Dunigan, in your opinion,</p> <p>24 obligated to the follow sufficient recommendations?</p> <p>25 A. Yes. I think he has some obligations to</p>	<p style="text-align: right;">Page 68</p> <p>1 affect the consequences of failure in keeping to the</p> <p>2 dialysis schedule to be a patient with end stage</p> <p>3 renal disease would be?</p> <p>4 A. He could feel worse at the time when he</p> <p>5 didn't get his dialysis from fluid overload or other</p> <p>6 issues related to his health.</p> <p>7 Q. The article that you chose to look at from</p> <p>8 the National Kidney Foundation, you believe that to</p> <p>9 be authoritative?</p> <p>10 A. Not necessarily. It is intended for</p> <p>11 patients, and it gives broad answers to frequently</p> <p>12 asked questions.</p> <p>13 Q. Do you believe it is reliable?</p> <p>14 A. I think it is a reliable source. And I</p> <p>15 have no reason to think it is not reliable. It is</p> <p>16 not authoritative. It doesn't have the authors and</p> <p>17 the references to each and every comment made in it.</p> <p>18 Q. Actually it has, Doctor. It has about 167</p> <p>19 references, does it not?</p> <p>20 A. No. It is four pages and no references.</p> <p>21 Q. Oh, I am sorry. I was looking at the</p> <p>22 UpToDate information. The UpToDate information has</p> <p>23 167 references, true?</p> <p>24 A. Yes. It is a different style document</p> <p>25 from the electronic data base.</p>

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<p style="text-align: right;">Page 69</p> <p>1 Q. Okay. Let's go to the UpToDate document</p> <p>2 that you pulled regarding patient survival and</p> <p>3 maintenance dialysis. Is that a reliable source?</p> <p>4 A. Yes. I think it is reliable. It carries</p> <p>5 the authors biases but UpToDate in general is</p> <p>6 reliable.</p> <p>7 Q. And does that publication from UpToDate</p> <p>8 indicate that the patients who don't comply with</p> <p>9 their dialysis schedule are more likely to suffer</p> <p>10 death?</p> <p>11 A. It is one of the risks, yes.</p> <p>12 Q. Mr. Dunigan was subject to having a fatal</p> <p>13 arrhythmia at any time based upon his past medical</p> <p>14 history, true?</p> <p>15 MR. HARRINGTON: Foundation and form.</p> <p>16 THE WITNESS: I suppose potentially at</p> <p>17 risk but certainly not at special risk that day.</p> <p>18 Most of his conditions were chronic.</p> <p>19 Q. (By Mr. O'Loughlin) And those conditions</p> <p>20 of diabetes, end stage renal disease and</p> <p>21 cardiovascular disease all carry an independent risk</p> <p>22 of suffering a fatal arrhythmia, true?</p> <p>23 A. All through the same pathway. It is all</p> <p>24 diabetes and end stage renal disease, hypertension,</p> <p>25 all things that he had. The main risk is</p>	<p style="text-align: right;">Page 71</p> <p>1 clarify it is a cardiopulmonary arrest, and the</p> <p>2 cardiac arrest being the primary event. It depends</p> <p>3 on the kind of arrhythmia or the setting in which it</p> <p>4 happens. If you take all comers, it is between 18</p> <p>5 and 22 percent survive to go home independently. He</p> <p>6 had a pulseless electrical activity. That is a</p> <p>7 different resuscitation from what Dr. Schwartz says</p> <p>8 he has, which is a ventricular fibrillation arrest.</p> <p>9 Q. A ventricular fibrillation arrest is one</p> <p>10 of those in the group that you just talked about,</p> <p>11 the arrest and the resuscitation attempted and be</p> <p>12 unsuccessful in 18 to, what did you say, 25 percent</p> <p>13 of the time?</p> <p>14 A. 18 to 22 percent is the national average</p> <p>15 in '16, and in large part it depends on the</p> <p>16 patient's condition prior to the arrest.</p> <p>17 Q. Patients with diabetes, end stage renal</p> <p>18 disease, cardiovascular disease and hypertension are</p> <p>19 less likely to be successfully resuscitated</p> <p>20 following an arrhythmia. Is that correct?</p> <p>21 A. Not necessarily. Those things are chronic</p> <p>22 conditions and are not necessarily the cause of the</p> <p>23 arrhythmia arrest. Chronic renal failure is not by</p> <p>24 itself a cause of an arrest. It is the hyperkalemia</p> <p>25 which this man had, which could be the precipitating</p>
<p style="text-align: right;">Page 70</p> <p>1 cardiovascular disease. And he had that but they</p> <p>2 aren't separate risks. They are all the same risk.</p> <p>3 Q. And that same risk is an increased -- an</p> <p>4 increased risk of suffering a fatal arrhythmia?</p> <p>5 A. I am sorry. What did you say at the end?</p> <p>6 Q. That increased risk is the risk of</p> <p>7 suffering a fatal arrhythmia, among other things?</p> <p>8 A. Yes.</p> <p>9 Q. Patients can suffer fatal arrhythmias even</p> <p>10 in the hospital, and even with full and timely</p> <p>11 resuscitated measures and still not be resuscitated,</p> <p>12 true?</p> <p>13 A. True.</p> <p>14 Q. Are you aware of any statistics as to the</p> <p>15 percentage survival of patients suffering from</p> <p>16 arrhythmias and undergoing resuscitation in the</p> <p>17 hospital?</p> <p>18 A. Yes, I spent 25 years on a code blue</p> <p>19 committee. I was on every code. I am very aware of</p> <p>20 statistics at any given institution and the national</p> <p>21 standards.</p> <p>22 Q. Okay. What is the percentage -- survival</p> <p>23 percentage of patients suffering arrhythmia after</p> <p>24 having resuscitation in the hospital?</p> <p>25 A. It is important when you say arrest, to</p>	<p style="text-align: right;">Page 72</p> <p>1 event. Hypertension by itself does not cause</p> <p>2 arrhythmias.</p> <p>3 The other things that he had do not</p> <p>4 necessarily cause arrhythmias. You need a specific</p> <p>5 cause. In his situation, with his specific</p> <p>6 arrhythmia we have several clues as to what the cause</p> <p>7 was.</p> <p>8 Q. Well, what was it?</p> <p>9 A. I think it is hyperkalemia, high potassium</p> <p>10 in a patient who is due to be dialyzed and he had</p> <p>11 pulmonary edema likely associated with hypoxia when</p> <p>12 he is foaming at the mouth which was demonstrated at</p> <p>13 his autopsy as two of the primary events.</p> <p>14 Could the toxins in his system have</p> <p>15 participated? It is possible, but during his entire</p> <p>16 ER stay he had no indication he was intoxicated nor</p> <p>17 was there any indication that he took medications in</p> <p>18 the ER, nor were there any medications in his</p> <p>19 possession that he might have taken after the</p> <p>20 technical discharge. So despite having some clinical</p> <p>21 or chemical evidence for his having had toxins on</p> <p>22 board, there is no clinical evidence of anything</p> <p>23 like that.</p> <p>24 So the hypoxia and hyperkalemia are the</p> <p>25 most likely causes of the pulseless electrical</p>

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<p style="text-align: right;">Page 73</p> <p>1 activity.</p> <p>2 Q. Which of those --</p> <p>3 A. I am sorry. You need to get closer to the</p> <p>4 speaker again.</p> <p>5 Q. Which of those is it, hyper or hypo?</p> <p>6 A. Hyper, high potassium.</p> <p>7 Q. Okay. Was it hyperkalemia or hypoxia that</p> <p>8 caused Mr. Dunigan to, in your opinion, be unable to</p> <p>9 stand up?</p> <p>10 A. I think that the weakness associated with</p> <p>11 end stage renal disease, while having metabolic</p> <p>12 events with hyperglycemia and hyperkalemia can</p> <p>13 certainly lead to weakness that someone is not able</p> <p>14 to stand alone, particularly someone with a previous</p> <p>15 stroke and left hemiparalysis.</p> <p>16 Q. Based upon the statistics you provided and</p> <p>17 your experience as a critical care physician and a</p> <p>18 reviewer of in-hospital codes, would you agree that</p> <p>19 according to those percentages, even if Mr. Dunigan</p> <p>20 suffered a cardiac arrest in the emergency room, he</p> <p>21 had a less than 50 percent chance of survival?</p> <p>22 A. Yes. I think that is true. The whole</p> <p>23 point is to prevent the arrest by treating him when</p> <p>24 he has a change in status with distress, not wait</p> <p>25 until the arrest and then try to resuscitate him.</p>	<p style="text-align: right;">Page 75</p> <p>1 room and reversed the narcotic effect with IV</p> <p>2 Narcan that reverses within minutes the respiratory</p> <p>3 distress and decompensation that he had in the back</p> <p>4 of the police car. So he needed supportive care</p> <p>5 under the direction of trained medical people who</p> <p>6 already knew him.</p> <p>7 Q. Up to the time he had been back in the</p> <p>8 police car, do you know whether Mr. Dunigan ever had</p> <p>9 abnormal vitals signs?</p> <p>10 A. Well, they weren't taken on discharge from</p> <p>11 the ER or in the next several hours or when he was</p> <p>12 laying on the ground, so he had no vital signs</p> <p>13 taken. We don't know what they were.</p> <p>14 Q. Which would mean that you are not able to</p> <p>15 say that he had abnormal vital signs at any time up</p> <p>16 until the time he was placed the police car, true?</p> <p>17 A. We don't have any vital signs until he was</p> <p>18 dead. None were taken. So they weren't normal or</p> <p>19 abnormal. There is no information.</p> <p>20 Q. Are you able to offer an opinion as to</p> <p>21 whether, if taken, any of his vitals signs would</p> <p>22 have been abnormal up to the time he was placed in</p> <p>23 the police car?</p> <p>24 A. It is hard to say. I think he was in</p> <p>25 distress and likely would have had abnormal vitals.</p>
<p style="text-align: right;">Page 74</p> <p>1 That was totally unsuccessful at the jail.</p> <p>2 Q. And you can't say it would have been any</p> <p>3 more successful if it was in the emergency room</p> <p>4 department, true?</p> <p>5 A. Correct. He needed to be treated before</p> <p>6 he had a life threatening or life-ending arrhythmia.</p> <p>7 That is why he needed timely attention.</p> <p>8 Q. Are you able to offer an opinion as to</p> <p>9 what treatment he would have received if he had been</p> <p>10 taken back to the emergency department?</p> <p>11 A. As I mentioned in my report, I think he</p> <p>12 needed a set of vital signs, a set of labs. He</p> <p>13 needed supplemental oxygen. With his dramatic</p> <p>14 hyperkalemia discovered at autopsy, he would have</p> <p>15 needed reversing of that. It is done with IV</p> <p>16 calcium and an IV bicarbonate solution and then</p> <p>17 proceeding to dialysis that is readily available at</p> <p>18 Bronson.</p> <p>19 The reassessment, while he is having</p> <p>20 snoring respirations and foaming at the mouth was</p> <p>21 subsequently demonstrated to be pulmonary edema.</p> <p>22 Supplemental oxygen and respiratory support in the</p> <p>23 emergency room is readily available. And evaluation</p> <p>24 for the toxicology findings that they found at</p> <p>25 autopsy could easily have been done in the emergency</p>	<p style="text-align: right;">Page 76</p> <p>1 It was from the hypertension. I expect that would</p> <p>2 have been a common scenario with somebody who has</p> <p>3 been having pain in the chest and was unable to walk</p> <p>4 to have high blood pressure. He had a high heart</p> <p>5 rate when he came in. It would be fully expectable</p> <p>6 for him to have a higher heart rate again. He had</p> <p>7 snoring respirations. It would be plausible that he</p> <p>8 would have an increased respiratory rate at that</p> <p>9 time, but no vitals were taken, therefore, guessing</p> <p>10 about his vitals is not productive. He was in</p> <p>11 distress and got no vitals.</p> <p>12 Q. The question is whether or not you believe</p> <p>13 you can guess about his vitals?</p> <p>14 A. I have been told in the past not to guess</p> <p>15 in depositions. I think he would likely have had</p> <p>16 abnormal vitals but I don't have to guess about</p> <p>17 that.</p> <p>18 Before he had died, he had abnormal</p> <p>19 vitals.</p> <p>20 Q. I am not talking about before he died. I</p> <p>21 am talking about before he was placed in the police</p> <p>22 car, it would be speculation for you say that if</p> <p>23 vital signs were taken they would have been</p> <p>24 abnormal?</p> <p>25 A. I think they likely would have been</p>

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<p style="text-align: right;">Page 77</p> <p>1 abnormal as I mentioned, but I don't think it is a</p> <p>2 guess.</p> <p>3 Q. You are claiming you can offer an opinion</p> <p>4 he would have had hypertension, high blood pressure?</p> <p>5 A. I think that is one of the vital sign</p> <p>6 abnormalities that he could have demonstrated. It</p> <p>7 fits well with developing pulmonary edema. He had</p> <p>8 diastolic dysfunction on his previous multiple</p> <p>9 admissions and evaluations. Diastolic dysfunction</p> <p>10 means your heart doesn't work when your blood</p> <p>11 pressure is high.</p> <p>12 When he is collapsed onto the pavement and</p> <p>13 his legs don't work and is being abused verbally, I</p> <p>14 think that is a situation which his high blood</p> <p>15 pressure would likely have manifested itself and</p> <p>16 could easily be the reason, in part, for his change</p> <p>17 in status with foaming at the mouth and developing</p> <p>18 pulmonary edema and going downhill. He clearly had</p> <p>19 a change in status.</p> <p>20 Q. Is it your expert opinion that Mr. Dunigan</p> <p>21 had a change in status and deterioration because he</p> <p>22 was verbally abused?</p> <p>23 A. I don't think the verbal abuse helped him.</p> <p>24 Q. That is not my question. Are you able to</p> <p>25 say --</p>	<p style="text-align: right;">Page 79</p> <p>1 participate in his decompensation and contributed to</p> <p>2 his death.</p> <p>3 Q. You are testifying he that was placed on</p> <p>4 the floor of the police car?</p> <p>5 A. That is what the video looks like. He had</p> <p>6 his head on one side supported by Art Carlisle and</p> <p>7 the others had his feet when they put him in. When</p> <p>8 they stopped the car what they say is one minute</p> <p>9 into the transport he was wedged down between the</p> <p>10 seat and the cage on the floor.</p> <p>11 Q. But that is not where he was placed</p> <p>12 originally, true?</p> <p>13 A. I can't tell that. I can't see anything</p> <p>14 on the video.</p> <p>15 Q. You can't?</p> <p>16 A. In the video that is taken at Bronson</p> <p>17 that, while they are putting him in the car,</p> <p>18 Carlisle blocks any view I have. And they have to</p> <p>19 push the door closed with Dunigan's upper body and</p> <p>20 head against the left-hand rear door. Then the</p> <p>21 video I have of him in the car is when they stop and</p> <p>22 he is in obvious distress.</p> <p>23 Q. The camera in the police video is in the</p> <p>24 car, true?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 78</p> <p>1 A. I think it is a contributor.</p> <p>2 Q. Are you able to say within a 50 percent</p> <p>3 probability that any verbal abuse Mr. Dunigan may</p> <p>4 have suffered contributed to his demise?</p> <p>5 A. His verbal and physical abuse contributed</p> <p>6 to his demise. I can say that. It is not the only</p> <p>7 thing.</p> <p>8 Q. I am talking about the verbal abuse. You</p> <p>9 are going to sit there and say that as a medical</p> <p>10 expert it is greater than 50 percent that what was</p> <p>11 said to Mr. Dunigan contributed to his demise?</p> <p>12 A. Yes. It contributed to his poor outcome.</p> <p>13 Q. How?</p> <p>14 A. I have just gone through, high blood</p> <p>15 pressure and high heart rate while collapsing on the</p> <p>16 floor and being sworn at with vulgarities and told</p> <p>17 you are faking is not a situation that people</p> <p>18 respond to well.</p> <p>19 And I think as part of his decompensation</p> <p>20 that occurred during the time when he is unable to</p> <p>21 walk and laying on the ground and being handcuffed</p> <p>22 and put into the car with three people putting him</p> <p>23 on the floor in the back seat, those are not things</p> <p>24 that I would expect people to just have normal</p> <p>25 vitals signs with. And abnormal vitals signs</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. And it shows Mr. Dunigan on the seat</p> <p>2 initially, does it not?</p> <p>3 A. I don't have that. All I have is from</p> <p>4 when they stopped the car. I don't have the entire</p> <p>5 police in-car video. They say it was one minute</p> <p>6 later and he is down between the seat and the cage</p> <p>7 on the floor.</p> <p>8 I don't have any information except the</p> <p>9 Bronson video that shows the three of them laying</p> <p>10 him horizontally in the back. I have no information</p> <p>11 that he is setting upright in the police car. There</p> <p>12 may be a video but I haven't seen it.</p> <p>13 Q. And no information that he was placed on</p> <p>14 the floor in the back seat of the police car either,</p> <p>15 true?</p> <p>16 A. First time I see him a minute later he is</p> <p>17 on the floor after having been delivered into the</p> <p>18 car by three security officers. And one of them had</p> <p>19 to put -- reach in from the left side and assist him</p> <p>20 across the back. That is the part I saw.</p> <p>21 Q. So you can't say that, without</p> <p>22 speculation, he was placed on the floor of the</p> <p>23 police vehicle initially?</p> <p>24 A. No. He may have been placed on the seat</p> <p>25 horizontally. I just don't have any video</p>

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<p style="text-align: right;">Page 81</p> <p>1 confirmation of that.</p> <p>2 Q. So it would be speculation for you to</p> <p>3 state that he was placed on the floor in the back</p> <p>4 seat of the police car, true?</p> <p>5 A. I have told you the two points in time</p> <p>6 that I have information. One is when he placed in</p> <p>7 by three people with Carlisle bringing him across to</p> <p>8 the left-hand side of the back of the car near the</p> <p>9 door. And then one minute later he is on the floor.</p> <p>10 I don't have the entire time. That is all I have.</p> <p>11 Q. So you would agree with me it would be</p> <p>12 speculation for you to say that he was placed on the</p> <p>13 floor in the back seat of the police car initially?</p> <p>14 A. He may have been on the seat at one point</p> <p>15 but extrapolating from those two points in the time</p> <p>16 it is not as if he is sitting up in the normal</p> <p>17 position. And I don't think it is speculation.</p> <p>18 Q. So you can say without speculation that</p> <p>19 Mr. Dunigan was placed on the floor in the back of</p> <p>20 the police car rather than on the seat?</p> <p>21 MR. HARRINGTON: Objection to form and</p> <p>22 foundation. That's not what he is saying.</p> <p>23 THE WITNESS: I didn't say that.</p> <p>24 MR. O'LOUGHLIN: I thought it was exactly</p> <p>25 what he said.</p>	<p style="text-align: right;">Page 83</p> <p>1 in. When they stopped the car because he was having</p> <p>2 distress, he was in a horizontal position then. He</p> <p>3 was not in a normal sitting in the seat orientation</p> <p>4 as far as I can tell.</p> <p>5 And if you would like to ask that a few</p> <p>6 more times, I will tell you that again.</p> <p>7 Q. Thank you. We are going down this road</p> <p>8 because you earlier testified that he was placed on</p> <p>9 the floor of the police car.</p> <p>10 A. That's what it looked like to me when they</p> <p>11 were -- they put him in a position horizontally in</p> <p>12 the back of the car, and within a minute he was on</p> <p>13 the floor. At that time, he was in clear distress.</p> <p>14 Q. Wouldn't you want to look at a video from</p> <p>15 inside the police car before you decided that?</p> <p>16 A. I would be glad to look at any information</p> <p>17 that was made available to me, particularly the</p> <p>18 audio. I don't have every image and every audio. I</p> <p>19 am told that there is a microphone inside the car.</p> <p>20 The only information I have about the inside of the</p> <p>21 car is from partial videos, including the time when</p> <p>22 they stopped the car a minute after they left.</p> <p>23 Q. Do you know why you didn't receive all of</p> <p>24 the videos?</p> <p>25 A. No, I don't. I received an immense amount</p>
<p style="text-align: right;">Page 82</p> <p>1 THE WITNESS: No, it is not. Read the</p> <p>2 transcript.</p> <p>3 Q. (By Mr. O'Loughlin) Was he initially</p> <p>4 placed on the seat or on the floor in the back of</p> <p>5 the police car?</p> <p>6 A. I can't tell. I am blocked by Carlisle</p> <p>7 who has his head against the left rear door, that</p> <p>8 may be on left of the seat, but within one minute,</p> <p>9 according to the driver of the car, Shaffer, he is</p> <p>10 hearing snoring and stops. And he is at that point</p> <p>11 wedged between the cage and the front of the rear</p> <p>12 seats. Those are the two points in time that I</p> <p>13 have.</p> <p>14 Q. And with that information are you able to</p> <p>15 conclude without speculation that he was initially</p> <p>16 placed on the floor rather than on the seat?</p> <p>17 A. He may have been placed on the seat, but I</p> <p>18 have no information he was sitting upright in the</p> <p>19 way that would be the normal position of someone</p> <p>20 sitting on a car seat.</p> <p>21 Q. Meaning you would have to speculate as to</p> <p>22 whether he was placed on the seat or on the floor?</p> <p>23 A. I am not trying to speculate. I have</p> <p>24 those two points in time. He was dragged into the</p> <p>25 car and was in a horizontal position when he was put</p>	<p style="text-align: right;">Page 84</p> <p>1 of video, but it didn't include all of the ones that</p> <p>2 occurred in the jail either. But I don't -- some of</p> <p>3 those were something I don't know about their</p> <p>4 availability. I would be glad to look at them.</p> <p>5 Q. Of the video you did see, when the</p> <p>6 officers stopped to check on Mr. Dunigan, did that</p> <p>7 portion of the video have an audio?</p> <p>8 A. I believe so, yes. Yes. That is when</p> <p>9 they flashed a light in his face and say he is</p> <p>10 faking and do no further assessment.</p> <p>11 MR. O'LOUGHLIN: I am going to pass the</p> <p>12 witness at this time. And we are going to take a</p> <p>13 brief break.</p> <p>14 MR. HARRINGTON: Okay. Thank you.</p> <p>15 (A break was taken in the deposition</p> <p>16 after which the following proceedings were held:)</p> <p>17 Q. (By Mr. O'Loughlin) Doctor, I have passed</p> <p>18 the witness but I have one more area that he</p> <p>19 mentioned earlier, and that is from new opinions and</p> <p>20 notes and articles that you made after reviewing the</p> <p>21 report from Dr. Schwartz.</p> <p>22 A. Yes.</p> <p>23 Q. Could you tell me what you are talking</p> <p>24 about?</p> <p>25 A. This is another UpToDate article and the</p>

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<p style="text-align: right;">Page 85</p> <p>1 title of the 14-page chapter is Supportive Data For</p> <p>2 Advanced Cardiac Life Support and Adults With Sudden</p> <p>3 Cardiac Arrest. And it gets into the arrhythmias</p> <p>4 associated with sudden death, which I think is</p> <p>5 pulseless electrical activity, which is what they</p> <p>6 saw in the monitor in the jail. He opined that it</p> <p>7 was a ventricular fibrillation and that he says a</p> <p>8 lot of other things, but in the article it gives the</p> <p>9 classic lists of conditions associated with</p> <p>10 pulseless electrical activity arrest.</p> <p>11 On page 5 of that, there are several</p> <p>12 paragraphs that go through that. And from that I</p> <p>13 made some handwritten notes of what are called the 5</p> <p>14 Hs and Ts, which are the various diagnostic</p> <p>15 categories associated with P-E-A arrest, several of</p> <p>16 which we have already talked about. But that is a</p> <p>17 single page of handwritten notes and the UpToDate</p> <p>18 article are the results of reading Dr. Schwartz</p> <p>19 report with which I have multiple disagreements.</p> <p>20 Q. All right. First of all, do you have the</p> <p>21 article and your notes marked as Exhibit G?</p> <p>22 A. Sure. The article I think is 14. This one</p> <p>23 is 15.</p> <p>24 Q. All right. Could you read your notes into</p> <p>25 the record, Doctor?</p>	<p style="text-align: right;">Page 87</p> <p>1 crisis.</p> <p>2 Q. Not even something that would require</p> <p>3 treatment in the absence of other symptoms?</p> <p>4 A. Well, it could be used as an avenue for</p> <p>5 treatment, if they had done lab work in the</p> <p>6 emergency room and discovered the high potassium.</p> <p>7 Insulin is the other way to bring the potassium down</p> <p>8 and you would have room with a glucose of 172 to</p> <p>9 give some insulin in addition to bicarb and calcium.</p> <p>10 So it is important to know, more to know that it is</p> <p>11 not 500 or 20. Part of the reason I looked, was on</p> <p>12 the autopsy the fluid on his vitreous was only 14.</p> <p>13 Q. Okay. Let me try it again. We are</p> <p>14 talking about the glucose of 127, and that is not a</p> <p>15 level indicating diabetic crisis or requiring</p> <p>16 treatment, true?</p> <p>17 A. You misspoke. I believe it is 172. And</p> <p>18 if there were a reason to use insulin as an acute</p> <p>19 treatment for the hyperkalemia, it could be done</p> <p>20 without giving additional glucose. The glucose by</p> <p>21 itself does not require treatment.</p> <p>22 Q. That was my question. So let's try to</p> <p>23 stick to that.</p> <p>24 You would agree that a glucose level of</p> <p>25 172 obtained by the EMTs and known to Dr. Rigot</p>
<p style="text-align: right;">Page 86</p> <p>1 A. Surely. It says 5 Hs, capital H and Ts.</p> <p>2 The H were hypoxia, hypovolemia. H access which is</p> <p>3 hydrogen ion access or acidosis. Hypo, hyperkalemia</p> <p>4 and last one is hypothermia.</p> <p>5 Under the Ts, it is toxins, tamponade,</p> <p>6 T-A-M-P-O-N-O-D-E, tension pneumothorax, thrombosis</p> <p>7 pulmonary, and thrombosis coronary.</p> <p>8 My next note is regarding the</p> <p>9 hyperkalemia. It is increased K, meaning</p> <p>10 hyperkalemia. The treatment as we have talked about</p> <p>11 is calcium and bicarb. And then --</p> <p>12 Q. I am sorry. Are you reading --</p> <p>13 A. This is what my notes say.</p> <p>14 Q. Are you reading from your notes?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. I am just asking you to read</p> <p>17 exactly what your notes say.</p> <p>18 A. All right. That line says increased K,</p> <p>19 calcium, comma bicarb. There is a note to myself</p> <p>20 check EMS glucose and I found the glucose that they</p> <p>21 obtained, it was 172. And that is it.</p> <p>22 Q. Okay. And a glucose of 172 obtained by</p> <p>23 the EMT does not indicate a diabetic crisis, does</p> <p>24 it?</p> <p>25 A. No. It is abnormally high but not a</p>	<p style="text-align: right;">Page 88</p> <p>1 would not indicate a diabetic crisis or require</p> <p>2 treatment in the absence of other symptoms, true?</p> <p>3 A. Yes. It does not require emergency</p> <p>4 treatment in the absence of other data or symptoms.</p> <p>5 Q. Thank you. Why is that article important</p> <p>6 in the context of this case?</p> <p>7 A. Well, Dr. Schwartz prepared a report. He</p> <p>8 thought that the life-threatening arrhythmia was most</p> <p>9 likely ventricular fibrillation. In the data from</p> <p>10 the case there is no ventricular fibrillation. The</p> <p>11 AED did not see a shockable rhythm and the rhythm</p> <p>12 strip showed P-E-A. He goes on to explain how bad</p> <p>13 ventricular fibrillation is, but Mr. Dunigan has no</p> <p>14 indication that he has that.</p> <p>15 He also says that had they stopped the car</p> <p>16 to check him he wouldn't have had any vital signs.</p> <p>17 He appears not to know that they stopped the car and</p> <p>18 checked him. The P-E-A seems the most likely to me</p> <p>19 and this article is about the causes of P-E-A.</p> <p>20 Q. All right. Just a couple of questions on</p> <p>21 that. An initial arrhythmia and ventricular</p> <p>22 fibrillation can cause a fatal arrest, and then</p> <p>23 later when the patient is placed on a monitor could</p> <p>24 appear as pulseless electrical activity, true?</p> <p>25 A. No. That is highly unlikely. If you have</p>

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<p style="text-align: right;">Page 89</p> <p>1 ventricular fibrillation and they come along and 15</p> <p>2 minutes later with the ambulance arriving and then</p> <p>3 it takes some time to set it up, you will be dead.</p> <p>4 If you started with course ventricular fibrillation,</p> <p>5 it would become fine ventricular fibrillation, and</p> <p>6 the AED would have reconized that as a shockable</p> <p>7 arrythmia. And you wouldn't have P-E-A, which is an</p> <p>8 electrical rhythm which looks normal but no pulse.</p> <p>9 Those don't go together. The end point for</p> <p>10 ventricular fibrillation not treated with</p> <p>11 cardioversion is death. It doesn't degenerate to</p> <p>12 P-E-A.</p> <p>13 Q. And why does that matter in this case?</p> <p>14 A. Because they saw P-E-A, and Dr. Schwartz</p> <p>15 is wrong, I think. There is a lot of things in there</p> <p>16 that I didn't understand or I thought were wrong in</p> <p>17 his report.</p> <p>18 Q. The end results of P-E-A or defib,</p> <p>19 untreated, is death, true?</p> <p>20 A. It may well be, yes. P-E-A has a lot more</p> <p>21 treatable options with those 10 Hs and Ts. It gives</p> <p>22 you a directed treatment to reverse the cause for</p> <p>23 the P-E-A. That is the part about the calcium</p> <p>24 bicarb and insulin and reversing the hypoxia</p> <p>25 immediately.</p>	<p style="text-align: right;">Page 91</p> <p>1 Q. You do not know the requirements that</p> <p>2 MCOLES, which is the licensing agency for the state</p> <p>3 of Michigan, requires for a police officer, correct?</p> <p>4 A. Correct.</p> <p>5 Q. Would I also be fair in assuming that you</p> <p>6 have never worked as road patrol officer, correct?</p> <p>7 A. As a what? Control officer?</p> <p>8 Q. A road patrol officer?</p> <p>9 A. R-O-A-D?</p> <p>10 Q. Correct.</p> <p>11 A. No, I have not.</p> <p>12 Q. It would also be fair to assume that you</p> <p>13 have never made an arrest of an individual?</p> <p>14 A. Correct.</p> <p>15 Q. Would I also be fair in assuming that you</p> <p>16 have never given an expert opinion about how a</p> <p>17 police officer, a Michigan police officer with EMT</p> <p>18 training, should handle an arrest of a citizen?</p> <p>19 A. I am not sure about the EMT training but I</p> <p>20 have testified about police officers and death in</p> <p>21 custody.</p> <p>22 Q. I would be fair in assuming that you have</p> <p>23 never been qualified as an expert in the area of how</p> <p>24 a police officer in the state of Michigan with EMT</p> <p>25 training could qualify in or arresting a citizen?</p>
<p style="text-align: right;">Page 90</p> <p>1 MR. O'LOUGHLIN: All right. I will pass</p> <p>2 the witness.</p> <p>3 EXAMINATION</p> <p>4 BY MR. VANDERLAAN:</p> <p>5 Q. Once again, Doctor, I represent Officers</p> <p>6 Nugent and Shaffer. Officer Shaffer arrived at the</p> <p>7 hospital approximately 5:45 a.m. on the 6th.</p> <p>8 Officer Shaffer was the officer that brought the car</p> <p>9 to pick up Mr. Dunigan?</p> <p>10 A. Did you say he came at 5:45?</p> <p>11 Q. Approximately close to that. I just want</p> <p>12 to concentrate on the two officers who I represent.</p> <p>13 A. Sure, I don't think he came that evening.</p> <p>14 Q. Well, the testimony will show otherwise.</p> <p>15 You are wrong.</p> <p>16 You are not an expert in the area of</p> <p>17 police policies and procedures in the state of</p> <p>18 Michigan, are you?</p> <p>19 A. No.</p> <p>20 Q. You have never testified as an expert in</p> <p>21 that area in the state of Michigan, correct?</p> <p>22 A. No. That's not correct.</p> <p>23 Q. You have never gone to a police academy,</p> <p>24 correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. HARRINGTON: Object to form and</p> <p>2 foundation, with the part of the testimony involving</p> <p>3 his medical training and experience.</p> <p>4 Q. (By Mr. Vanderlaan) You have never been</p> <p>5 qualified, it is fairly simple, you haven't been</p> <p>6 qualified in that particular area, correct?</p> <p>7 MR. HARRINGTON: Form and foundation.</p> <p>8 Form and foundation.</p> <p>9 THE WITNESS: I am sorry could I have it</p> <p>10 read back or say it again there are too many</p> <p>11 interruptions here.</p> <p>12 MR. VANDERLAAN: Could Ruth read it back,</p> <p>13 please?</p> <p>14 (The following question was read back:</p> <p>15 You have never been qualified, it is</p> <p>16 fairly simple, you haven't been qualified</p> <p>17 in that particular area, correct?)</p> <p>18 THE WITNESS: I am not sure what the</p> <p>19 qualify has to do with it. Maybe you can state it</p> <p>20 again.</p> <p>21 Q. (By Mr. Vanderlaan) I don't think either</p> <p>22 -- I -- okay. You have never specifically been</p> <p>23 qualified as an expert in the area of testifying</p> <p>24 regarding a police officer in the state of Michigan</p> <p>25 with EMT training goes about arresting a citizen?</p>

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<p style="text-align: right;">Page 93</p> <p>1 MR. HARRINGTON: Objection to form and 2 foundation.</p> <p>3 THE WITNESS: Correct.</p> <p>4 Q. (By Mr. Vanderlaan) Okay. Thank you.</p> <p>5 Would be fair to assume you are not going 6 to be providing expert opinions what a reasonable 7 police officer in the state of Michigan would do in 8 arresting an individual?</p> <p>9 MR. HARRINGTON: Form and foundation, over 10 broad, vague, ambiguous. You don't know what I am 11 going to be asking him.</p> <p>12 THE WITNESS: Regarding the arrest 13 specifically, I would agree with that.</p> <p>14 Q. (By Mr. Vanderlaan) Thank you.</p> <p>15 Would I be fair in saying that there is 16 nothing in your unique education and background and 17 training as a medical doctor that qualifies you to 18 give opinions about how officers go about their 19 business here in the state of Michigan?</p> <p>20 MR. HARRINGTON: Objection to form and 21 foundation, vague and overbroad.</p> <p>22 THE WITNESS: Well, I don't. Are you 23 talking about this kind of transporting of a medical 24 patient, or are you talking about all of the other 25 things they do?</p>	<p style="text-align: right;">Page 95</p> <p>1 going to come right back if you sent them there.</p> <p>2 And as a fellow the next two years after 3 that I supported myself moonlighting in emergency 4 rooms throughout San Diego County. For the next 5 three and a half years after that I worked as full 6 time emergency room attending and at that time was 7 board qualified to take the ER boards dealing with 8 the same jail population and prisoners in a downtown 9 urban hospital. So I do have significant experience 10 with the issues of people who are noncompliant, 11 homeless, and have had a background of using drugs. 12 I have a significant experience with people like Mr. 13 Dunigan and his issues.</p> <p>14 To the extent that that answers your 15 question, you wanted to know if I had specific 16 training and experience. That is what I have.</p> <p>17 Q. I appreciate that, Doctor. And perhaps 18 those qualifications would uniquely qualify you to 19 give opinions regarding how a person should treat 20 the homeless, deal with the homeless or people on 21 drugs in a hospital or emergency room setting. I 22 understand that. But what I am getting at is that 23 there is nothing that uniquely qualifies -- that 24 uniquely qualifies you, with your background and 25 education, to give criticisms about a Michigan</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. (By Mr. Vanderlaan) What I am trying to 2 get at, Doctor, is that I understand you have 3 opinions in this case. I can show that video to 100 4 people. They are all going to have opinions. Your 5 wife may have seen the video. She has got an 6 opinion.</p> <p>7 What I am wondering is, is there anything 8 that is unique about your experience, training, 9 education and background that qualifies you to give 10 opinions about the actions of Officers Nugent and 11 Shaffer, or is it just obvious to anybody? That is 12 all.</p> <p>13 MR. HARRINGTON: Form and foundation.</p> <p>14 THE WITNESS: Well, during my training I 15 spent about 20 percent of my time in the emergency 16 room setting for the first three years as an 17 internal medicine intern and resident. Within the 18 emergency room at the University of California, San 19 Diego, there was designed specifically for prisoners 20 who were under arrest, a part of the emergency room 21 that was sequestered off from the rest, and in which 22 everybody spent time evaluating people, admitting 23 people to the hospital or sending them back to jail 24 with an assessment. And that included recognizing 25 when someone could not be handled in jail and was</p>	<p style="text-align: right;">Page 96</p> <p>1 police officer and how they go about arresting an 2 individual?</p> <p>3 A. Not about arresting --</p> <p>4 MR. HARRINGTON: Hang on. Hang on. I 5 object to form and foundation.</p> <p>6 And, Allan, if I may, I think what I hear 7 you are saying. You are trying to eliminate him 8 from being able to testify to police procedure. My 9 objection, just to get it out on the air, is that it 10 is going to stem from his recognition of his serious 11 medical conditions. That is all I am trying to do. 12 So I know where you are going. I don't think it 13 will happen, you know, but I am not going to stand 14 in your way. I am going to ask you to tailor it a 15 little bit more to actual police procedure.</p> <p>16 Does that make sense?</p> <p>17 MR. VANDERLAAN: So, if you are telling me 18 that you are not going to use him as an expert to 19 testify to police procedures and say that here is 20 where the officers dropped the ball based upon my 21 expertise in this area, you have another expert who 22 I am sure will do that, this will be very short.</p> <p>23 If you are going to just use him to say 24 the guy had a serious medical problem and here is 25 how I can tell, that I can understand.</p>

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<p style="text-align: right;">Page 97</p> <p>1 MR. HARRINGTON: What I am understanding 2 and here is where I am going with Dr. Landers as it 3 relates to your client, Allan, is that I expect Dr. 4 Landers to provide testimony that at the time that 5 your clients were involved my client was suffering 6 from a serious medical condition that you can see on 7 the video that they should have recognized, and 8 should have known and done something with that. It 9 is not how he was arrested, whether or not it was 10 valid or anything like that.</p> <p>11 Does that make sense?</p> <p>12 MR. VANDERLAAN: Sure.</p> <p>13 Q. (By Mr. Vanderlaan) Doctor, I take it 14 your testimony would be that not just a police 15 officer but anybody looking at this fellow should 16 have known that he was under a medical distress, am 17 I correct on that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. All right. Then let me just do 20 some cleaning up. And I was looking at your report 21 and that's what I want to focus on. And we still 22 have your opinions on page 3. I think it is the 23 last sentence of the first paragraph. You said 24 rather than respond to his distress he was accused 25 of acting.</p>	<p style="text-align: right;">Page 99</p> <p>1 thought, to their minds he was breathing, correct? 2 Is that you are understanding?</p> <p>3 A. Yes. They said, you are okay, you are 4 acting, and they lifted him up onto the seat.</p> <p>5 Q. Okay. But those three things that I said 6 that is what the officers did, correct? I don't 7 want to argue about whether it was enough or 8 whatever.</p> <p>9 A. No. They lifted him up in the seat, and 10 they flashed a light in his eyes. And I think they 11 did a sternal rub, at least briefly. Those are the 12 ones you mentioned that I remember.</p> <p>13 Q. Do you have any information at all at that 14 point either one of those officers said, we know he 15 is in medical distress, we know he is going to die, 16 we don't care, and we are taking him to jail? You 17 are not saying that, are you?</p> <p>18 A. No. They didn't say that and I don't 19 believe that they would have said that.</p> <p>20 Q. So you are not saying that?</p> <p>21 A. I am not saying that.</p> <p>22 Q. Okay. I guess what I am hearing you say 23 is that they dropped the ball?</p> <p>24 A. Yes. They say that if they thought they 25 recognized something they should have taken him for</p>
<p style="text-align: right;">Page 98</p> <p>1 At what point in time did someone say -- 2 what are you talking about there and who are you 3 talking about?</p> <p>4 A. When he was in the back of the police car, 5 my perception was, and apparently their perception 6 was there were worrisome things while they are 7 traveling. He was four blocks from the hospital. 8 They said it was a minute away. They thought he was 9 breathing poorly, snoring. To look at him on the 10 video taken at that time, he was unresponsive, had 11 fallen down between the seats and was flaccid, had 12 to be lifted up to be repositioned.</p> <p>13 When they flashed the light in his face 14 they said he blinked. That is not an assessment of 15 a mental status of someone who is -- has diminished 16 level of consciousness. And rather than respond to 17 his distress as noted at that time, he was accused 18 of acting.</p> <p>19 That is the two police officers involved, 20 Nugent and Shaffer. Shaffer is the man who I 21 believe is the EMT who did a sternal rub and said 22 that he was acting.</p> <p>23 Q. Well, the police officers did a sternal 24 rub in the back of the police car, flashed a light 25 in his eyes, in their minds he was reactive and they</p>	<p style="text-align: right;">Page 100</p> <p>1 medical attention. Their perception was that he 2 didn't have a medical emergency.</p> <p>3 Q. Thank you.</p> <p>4 And the second full paragraph under 5 opinions, about five lines up, the first paragraph 6 ends with that Mr. Dunigan died in the police car. 7 Did I summarize that accurately? Is that your 8 opinion he died in the police car?</p> <p>9 A. Yes.</p> <p>10 Q. And what is that based upon?</p> <p>11 A. Well, when they got to the place where the 12 people in jail were going to take over and take him 13 out of the car, these two officers left and were 14 going to do paperwork. And when the officers tried 15 to get him out of the car he had -- at that time he 16 was unresponsive and he never had vitals after that.</p> <p>17 Q. Were you aware that it is the county 18 sheriff's department procedure that when officers 19 bring an arrestee to the jail that they leave and 20 that the corrections officers or deputies of the 21 department take over and get the subject out of the 22 jail? Did you know that -- or out of the car?</p> <p>23 A. That's what the officers who were 24 transporting said and I have no reason to doubt that 25 that was routine.</p>

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<p style="text-align: right;">Page 101</p> <p>1 Q. As far as where Mr. Dunigan died, what I 2 am wondering is, did you mean to say he died in the 3 car --</p> <p>4 Did you mean to say he died in the car 5 because it is my understanding that a doctor 6 pronounced him deceased when he was outside the car?</p> <p>7 A. Well, he was pronounced dead at 7:40 after 8 unsuccessful resuscitation. But he never had any 9 signs of life at the police headquarters or jail 10 after he was taken out of the car. There was an 11 officer who with his left hand did a sternal rub and 12 thought there might be a moan. Well, a moan is not 13 the response you would expect for an awake, alert, 14 oriented person who has signs of life. And there 15 were no attempts to take vitals signs at that time. 16 He was placed in a wheelchair and taken in.</p> <p>17 The nurse then saw him. She, after they 18 put the oximeter on his finger, was told that he 19 didn't have any pulse or any oxygen. And at that 20 time they started resuscitation. That sudden death 21 occurred before the resuscitation, despite his being 22 pronounced at 7:40.</p> <p>23 Q. Would it be more accurate to say that Mr. 24 Dunigan did not exhibit signs of life when they are 25 taking him out of the car as opposed to he died in</p>	<p style="text-align: right;">Page 103</p> <p>1 Q. What was it in the video that causes you 2 to say that he was barely breathing?</p> <p>3 A. He had foam around his mouth, and it 4 looked to me like he had what I would refer to as 5 agonal breathing, a pattern just before death, with 6 a slow rate. Most people in distress breathe fast 7 and complain. He was not complaining. He was 8 flaccid and had foam around his mouth and minimal 9 breathing effort as was described in the autopsy.</p> <p>10 Q. Are you able to see the foam around Mr. 11 Dunigan's mouth in the video?</p> <p>12 A. Yes.</p> <p>13 Q. So if you and I watch that video together 14 it is your recollection that you would be able to 15 stop it at a point and say that is foam around the 16 mouth?</p> <p>17 A. That is my recollection. And that was the 18 testimony of the officers as well.</p> <p>19 Q. Well, the testimony of the officer who had 20 qualified that and said it was a poor choice of 21 words I believe. He had some spittle in the corners 22 of the mouth. So staying away from what the officer 23 said, I was wondering if that was something that you 24 recall seeing in the video such that you would say 25 he was foaming at the mouth?</p>
<p style="text-align: right;">Page 102</p> <p>1 the car?</p> <p>2 A. Those to me are quibbling. He had had no 3 signs of life from the time he was taken out of the 4 the car. And I think that is the time when he had a 5 cardiac pulmonary arrest. The fact that his death 6 was pronounced an hour later is a technicality 7 related to having the intern come over from the 8 hospital in the van and try to resuscitate him. As 9 soon as they took him out of the car he was dead.</p> <p>10 Q. Were you aware that one of the corrections 11 officers had stated that Mr. Dunigan was breathing 12 when he took him out of the car?</p> <p>13 A. The thing I remember was the sternal rub 14 with his left hand, and some evidence for a groan. 15 If he was indeed breathing, he died shortly after 16 and not at the moment before they opened the door.</p> <p>17 Q. Your point of the deputies or corrections 18 officers is to say that if he was breathing when 19 they took him out of the car, would that be 20 considered a sign of life?</p> <p>21 A. Yes, it was. He was barely breathing when 22 they stopped the car for the four minutes 23 previously.</p> <p>24 Q. And what do you base that upon?</p> <p>25 A. The video.</p>	<p style="text-align: right;">Page 104</p> <p>1 A. That was my recollection, yes.</p> <p>2 Q. All right. The last, I think it is the 3 last paragraph -- I am sorry. I am looking at the 4 second full paragraph where it says, maybe four 5 lines up, Mr. Dunigan died from neglect of his basic 6 needs. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And then the last part of the last 9 sentence says that Mr. Dunigan needed reevaluation 10 in the emergency department, not callous disregard 11 for his distress.</p> <p>12 What do you mean by that? That seems to 13 me to notch it up a level of almost willful neglect, 14 and I don't believe you are testifying to that?</p> <p>15 A. I am not saying it is willful that they 16 decided that he was distress and then decided to 17 drive on anyway. I thought it was obvious that he 18 was in distress. They stopped the car. They did an 19 inadequate evaluation. And he was clearly in 20 distress based on the video and their version of 21 what happened and they went on to the jail instead 22 of going back to the ER.</p> <p>23 Q. Let me give you a hypothetical, which I 24 hope is based upon the testimony and you correct me 25 if I am wrong. I want you to assume these two</p>

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<p style="text-align: right;">Page 105</p> <p>1 officers have testified as to their belief that 2 because Mr. Dunigan was medically discharged that he 3 was good to go, and that they took him to jail, and 4 that they relied on other officers telling them 5 that Mr. Dunigan was acting. So right or wrong, and 6 I realize in hindsight he obviously wasn't. I get 7 that. But do you still have a criticism of these 8 officers who will testify as to the number of times 9 they take somebody from the hospital to the jail as 10 to not thinking this guy was dying. Do you still 11 have a criticism? Or did I state that poorly? 12 A. I think I understood the background you 13 were giving. 14 Q. Okay. 15 A. I think that nonetheless the observations 16 they made, the reason they stopped the car their 17 concern he was not doing well was all appropriate. 18 It is just the response to his observed condition at 19 that time necessitated going back. 20 I am not saying that many people wouldn't 21 have survived to get to jail, but there was a change 22 in this man's status, and the fact that they relied 23 on information that came from other people is a 24 starting place. But when there is a change in 25 status, then it is time to reassess, not to assume</p>	<p style="text-align: right;">Page 107</p> <p>1 Dr. Schwartz didn't offer any, and so I just -- I 2 looked at the things I am familiar with about how 3 long people on dialysis with co-morbidities live. I 4 am not an actuary. This, as you said, is give or 5 take five years. 6 Q. And I just want to touch on this before I 7 stop. There a lot about this area, and that is Mr. 8 Dunigan's own responsibility here. I don't think he 9 was getting at in terms of the fall, but is it your 10 experience that someone who is not experiencing, you 11 know, what Mr. Dunigan may have been experiencing 12 should have said, A, don't take me to jail, take me 13 back to the ER, there is something wrong with me, or 14 something along those lines? 15 A. To the extent that he would have been 16 capable of doing that, I think that is a hoped for 17 expectation. By the time they stopped the car, he 18 looked to me like he would not be able to 19 communicate anything. 20 Q. Do you have an opinion as to what point in 21 that timeline Mr. Dunigan went into cardiac arrest? 22 A. Well, to the extent that there is 23 testimony that a sternal rub resulted in a moan and 24 you mentioned that the officer has stated that he 25 thought he was breathing, then he didn't have a</p>
<p style="text-align: right;">Page 106</p> <p>1 that everything is the way it was hours before when 2 discharged. 3 Q. And do you have an opinion on what would 4 have happened if the officers had either would have 5 gone back to the hospital or perhaps called an 6 ambulance to the scene? Do you have an opinion one 7 way or the other, or not? 8 A. Yes. I think he would have survived. 9 That is the last paragraph of my opinions. He 10 needed attention to his distress. The attention was 11 best delivered by people who are already familiar 12 with his condition and had seen him previously, knew 13 about all of the things that had happened earlier, 14 and the most practical is to take him directly. 15 Calling another ambulance responder would incur 16 delay and -- but either way had he been seen and 17 evaluated by medical personnel there were things to 18 do that would have saved his life. 19 Q. And then it is your opinion that had his 20 life been saved, he would have had a life expectancy 21 give or take of five years, correct? Did I hear 22 that correctly earlier? 23 A. Yeah. That was my estimate. Dr. Schwartz 24 was very critical of the pathologist who offered an 25 opinion about life expectancy. And unfortunately</p>	<p style="text-align: right;">Page 108</p> <p>1 cardiac arrest until after that point. Cardiac 2 arrest virtually immediately leads to respiratory 3 arrest and unconsciousness. 4 Q. Thank you, Doctor, for your time. I hope 5 there is enough time for you to get out ski. And 6 thank you, sir. 7 MR. O'LOUGHLIN: I have a couple of more. 8 MR. HARRINGTON: I have a few questions. 9 Just a second, Doctor. 10 EXAMINATION 11 BY MR. HARRINGTON: 12 Prior to Mr. Dunigan's discharge from 13 Bronson was he suffering from a serious medical 14 condition needing serious medical treatment? 15 MR. O'LOUGHLIN: Form and foundation. 16 What do you mean by discharge? 17 Q. (By Mr. Harrington) You understand that 18 Mr. Dunigan was provided with a discharge, including 19 discharge, I guess, papers from Bronson, correct? 20 A. Yes. 21 Q. And prior to that time was he suffering 22 from a serious medical condition requiring medical 23 treatment? 24 A. Yes. 25 Q. After discharge and before defendants</p>

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<p style="text-align: right;">Page 109</p> <p>1 Nugent and Shaffer became involved, was Mr. Dunigan 2 suffering from a serious medical condition requiring 3 medical intervention? 4 A. Yes. 5 Q. Had the medical intervention been provided 6 either prior to discharge or after discharge and 7 still before Officers Nugent and Shaffer's 8 involvement, would Mr. Dunigan have survived May 6, 9 2016? 10 A. Yes. 11 MR. O'LOUGHLIN: Form and foundation. 12 Q. (By Mr. Harrington) After the arrival of 13 Mr. -- I am sorry, Officer Shaffer and Officer 14 Nugent into the picture with Mr. Dunigan, was Mr. 15 Dunigan suffering from an emergency medical 16 condition requiring treatment? 17 A. Yes. 18 Q. As you see the events transpire on the 19 videos that were provided, is this something that 20 was observable to you? 21 A. Yes. 22 Q. Was this something that was observable to 23 you as a medical professional? 24 A. Yes. 25 Q. Was it something observable to you as a</p>	<p style="text-align: right;">Page 111</p> <p>1 video of Mr. Dunigan in the waiting area after he 2 was discharged, is that correct? 3 A. Yes. 4 Q. And you saw that there were nurses that 5 had had some interaction with Mr. Dunigan? 6 A. Yes. 7 Q. You saw -- 8 MR. O'LOUGHLIN: Form and foundation. 9 Q. (By Mr. Harrington) You saw that there 10 were other hospital employees that had or that were 11 at least within vision of Mr. Dunigan? 12 A. Correct. 13 Q. And you have testified that you have 14 knowledge, training and experience as to how 15 emergency departments work? 16 A. Yes. 17 Q. If somebody is in visible distress or 18 should reasonably be believed to be in visible 19 distress, say even post discharge, what is the 20 requirements of hospital personnel such as people, 21 either nurses or people in registration, what are 22 they required to do if they observe something? 23 MR. O'LOUGHLIN: Form and foundation. 24 THE WITNESS: They bring them back into 25 the triage area, reinitiate paperwork, and have them</p>
<p style="text-align: right;">Page 110</p> <p>1 lay individual? 2 A. Yes. 3 MR. O'LOUGHLIN: Form and foundation. 4 MR. VANDERLAAN: Same objection. 5 MR. HARRINGTON: And the same question -- 6 MR. VANDERLAAN: As an aside, could we 7 just, I would like to have an agreement that when 8 Mr. O'Loughlin makes an objection, put me down too, 9 thank you, because you can't hear me. 10 Q. (By Mr. Harrington) While Mr. Dunigan 11 was in the waiting room after he had been 12 discharged, was it observable to you that he was 13 suffering from an emergency medical condition? 14 A. Yes. 15 MR. O'LOUGHLIN: Form and foundation. 16 Q. (By Mr. Harrington) Was it observable to 17 you as a trained medical professional that he was 18 suffering from an emergency medical condition while 19 waiting in the emergency room? 20 A. Yes. 21 Q. Also as a lay professional or a 22 individual, I mean? 23 MR. O'LOUGHLIN: Same. 24 THE WITNESS: Yes. 25 Q. (By Mr. Harrington) Doctor, you saw the</p>	<p style="text-align: right;">Page 112</p> <p>1 medically screened and reevaluated. 2 Q. (By Mr. Harrington) And based on your 3 review of the video showing Mr. Dunigan in the 4 waiting area in conjunction with visualizing 5 hospital employees in the vicinity of and having an 6 opportunity to observe Mr. Dunigan, and based on 7 your experience in emergency department settings, 8 what is it that the hospital staff should have done? 9 A. They should have approached him, talked to 10 him about what they perceived to be going on and 11 offer to bring him back to the emergency room for 12 further evaluation and care. 13 Q. And had they done all of that, what would 14 have happened? 15 A. I think it would have been -- 16 MR. O'LOUGHLIN: Form and foundation. 17 Sorry. 18 THE WITNESS: I think it would have been 19 recognized that he was seriously ill and had issues 20 that needed to be treated and that treatment would 21 have been initiated as I have talked about. 22 Q. (By Mr. Harrington) And had all of that 23 been done, would Mr. Dunigan have survived May 6, 24 2016? 25 A. Yes.</p>

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<p style="text-align: right;">Page 113</p> <p>1 MR. O'LOUGHLIN: Form and foundation.</p> <p>2 Q. (By Mr. Harrington) Understanding all of</p> <p>3 this, was Mr. Dunigan allowed off of Bronson</p> <p>4 Hospital campus in an unstable condition?</p> <p>5 A. I am sorry. At which time?</p> <p>6 MR. O'LOUGHLIN: Form and foundation.</p> <p>7 Q. (By Mr. Harrington) Fair enough. You</p> <p>8 understand that Mr. Dunigan was taken off of Bronson</p> <p>9 Hospital campus, correct?</p> <p>10 A. Yes, at about 6:40.</p> <p>11 Q. When he left Bronson's campus, was he in a</p> <p>12 stable or unstable condition?</p> <p>13 A. Unstable.</p> <p>14 Q. In your understanding of EMTALA, and in</p> <p>15 conjunction with your prior experience working in</p> <p>16 emergency departments, does the requirements of</p> <p>17 EMTALA apply to all hospital staff that would even</p> <p>18 include security?</p> <p>19 A. Yes, and they --</p> <p>20 MR. O'LOUGHLIN: Form and foundation.</p> <p>21 THE WITNESS: They talk about being</p> <p>22 trained in EMTALA --</p> <p>23 MR. O'LOUGHLIN: We are talking over each</p> <p>24 other. Let me restate my objection. Let me restate</p> <p>25 my objection to form and foundation.</p>	<p style="text-align: right;">Page 115</p> <p>1 circumstances, what should the hospital security</p> <p>2 staff have done?</p> <p>3 A. Taken him back to the triage nurse after</p> <p>4 asking him if he needed or wanted help, and he was</p> <p>5 ten feet away from their desk, get the triage nurse</p> <p>6 to reassess him and restart the process of him being</p> <p>7 an emergency patient.</p> <p>8 Q. In your experience as a physician have you</p> <p>9 ever given any type of lectures or speeches or</p> <p>10 discussions or talks or anything like that to</p> <p>11 individuals such as, say, registration, nurses and</p> <p>12 or security staff?</p> <p>13 A. The topic being?</p> <p>14 Q. Being somewhat of a quasi EMTALA training,</p> <p>15 where you talk to individuals, you know, say if this</p> <p>16 is witnessed or that they are this seeing this,</p> <p>17 this is what you do? Go ahead.</p> <p>18 A. Yes. I have talked to people about EMTALA</p> <p>19 and it is partly the kinds of things you are talking</p> <p>20 about, if you see someone anywhere on the campus, in</p> <p>21 a parking structure, in the men's room or anywhere</p> <p>22 else that EMTALA applies.</p> <p>23 The other much more common circumstance</p> <p>24 for EMTALA to involve me was as a medical director</p> <p>25 of the ICU where someone at another hospital would</p>
<p style="text-align: right;">Page 114</p> <p>1 And my question was, do you really want to</p> <p>2 do this, Jim, because it is going to go into a lot</p> <p>3 more questions about who is witnessing because</p> <p>4 anybody would have violated EMPALA.</p> <p>5 MR. HARRINGTON: Well, yeah, because part</p> <p>6 of my claim against your client is that EMTALA was</p> <p>7 violated by multiple people.</p> <p>8 MR. O'LOUGHLIN: So it does affect your</p> <p>9 entire claim?</p> <p>10 MR. HARRINGTON: So, yeah. I mean. So he</p> <p>11 just said yes.</p> <p>12 Is that correct, Doctor, that this applies</p> <p>13 to security staff as well.</p> <p>14 THE WITNESS: Yes. That's what they said</p> <p>15 and they had been trained with and that would be my</p> <p>16 understanding.</p> <p>17 Q. (By Mr. Harrington) And at the time the</p> <p>18 hospital security staff was engaged with Mr. Dunigan</p> <p>19 do you have any opinion as to whether or not he was</p> <p>20 suffering from a serious medical condition</p> <p>21 observable to them?</p> <p>22 A. I think he was.</p> <p>23 MR. O'LOUGHLIN: Form and foundation.</p> <p>24 Q. (By Mr. Harrington) And that they were</p> <p>25 therefore acting reasonable and prudent? Under the</p>	<p style="text-align: right;">Page 116</p> <p>1 be calling asking to transfer a patient for a</p> <p>2 perceived higher level of care, and that also falls</p> <p>3 into the EMTALA discussion. And the emergency room</p> <p>4 doctor or emergency nurse or the ICU nurse or the</p> <p>5 discharge nurse in the ICU should not take it upon</p> <p>6 themselves to say no to that request but refer it on</p> <p>7 to the physician in charge for an assessment and</p> <p>8 also for an assessment is an EMTALA violation to</p> <p>9 not comply with that request.</p> <p>10 Q. One of the things that you have said in</p> <p>11 answering my question, you said something about</p> <p>12 those people, and are you referring to security</p> <p>13 individuals as well?</p> <p>14 A. It could be anybody who is employed in the</p> <p>15 areas around the emergency room, or in my example,</p> <p>16 in the ICU. It can't be -- it could be an ICU</p> <p>17 setting. It could be a secretary. It could be a</p> <p>18 security officer in the ER. It could be anybody.</p> <p>19 Q. Right. And in your specific experience</p> <p>20 and training as a physician have some of those talks</p> <p>21 that you have given included talks to security</p> <p>22 personnel?</p> <p>23 A. Yes security, respiratory therapists,</p> <p>24 nurses, secretaries and clerical people, the greeter</p> <p>25 at the main entrance to the hospital as well as</p>

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<p style="text-align: right;">Page 117</p> <p>1 people that work the grounds around the hospital who</p> <p>2 are all employees of the hospital.</p> <p>3 Q. And in reviewing all of the facts that you</p> <p>4 reviewed watching the video, have you reached a</p> <p>5 conclusion to whether or not the EMTALA statute was</p> <p>6 violated with respect to Mr. Dunigan?</p> <p>7 A. Yes.</p> <p>8 MR. O'LOUGHLIN: Form and foundation.</p> <p>9 Q. (By Mr. Harrington) I am sorry. What was</p> <p>10 the answer?</p> <p>11 A. Yes, I think it was violated when he was</p> <p>12 sent off to jail while in need of medical attention.</p> <p>13 Q. You have testified, have you not, in cases</p> <p>14 involving police officers?</p> <p>15 A. I have.</p> <p>16 MR. HARRINGTON: That is all I have.</p> <p>17 Thank you.</p> <p style="text-align: center;">EXAMINATION</p> <p>18 BY MR. O'LOUGHLIN:</p> <p>19 Q. Doctor, this is Jack O'Loughlin. I have</p> <p>20 few more as you might expect.</p> <p>21 First of all, you have no criticisms of</p> <p>22 the resuscitation efforts based upon everything you</p> <p>23 have reviewed, do you?</p> <p>24 A. Sorry. What point in time?</p> <p style="text-align: right;">Page 118</p>	<p style="text-align: right;">Page 119</p> <p>1 A. True.</p> <p>2 Q. You read the autopsy report?</p> <p>3 A. I did.</p> <p>4 Q. And the toxicology and lab results?</p> <p>5 A. I did.</p> <p>6 Q. Were any of the drugs found in Mr.</p> <p>7 Dunigan's system at a toxic level?</p> <p>8 A. Yes, some were.</p> <p>9 Q. Which ones?</p> <p>10 A. I would have to have the sheet in front of</p> <p>11 me.</p> <p>12 Q. What are you basing the -- how are you</p> <p>13 making a determination as to whether any of those</p> <p>14 drugs found were at a toxic level?</p> <p>15 A. Well, I guess there is two different</p> <p>16 versions. One is a therapeutic level. When a</p> <p>17 prescribed drug is on board there are target zones</p> <p>18 for levels which may be exceeded in some people.</p> <p>19 The other is that there are some drugs</p> <p>20 that are always a toxin in the system for which</p> <p>21 there is no therapeutic level, for example, cocaine.</p> <p>22 So having cocaine in his system in the preceding</p> <p>23 five days raises a question whether that is part of</p> <p>24 what may have precipitated his decompensation.</p> <p>25 I am just looking for the lab work. Do</p>
<p>1 Q. At the jail.</p> <p>2 A. At the jail?</p> <p>3 Q. Yes.</p> <p>4 A. No. I have limited information from a</p> <p>5 note from Dr. Patell who was the intern who went to</p> <p>6 the site and he did what sounded like the</p> <p>7 appropriate things. I don't have rhythm strips.</p> <p>8 MR. HARRINGTON: And counsel -- counsel,</p> <p>9 just to make it easier, I am not advancing any</p> <p>10 theory against Dr. Patell's involvement that he</p> <p>11 could have done anything to save Mr. Dunigan, if</p> <p>12 that makes it easier.</p> <p>13 Q. (By Mr. O'Loughlin) I was pretty sure you</p> <p>14 weren't. So far nothing makes it easier, but I</p> <p>15 would like an answer to my question.</p> <p>16 Doctor, you have no criticisms of the</p> <p>17 resuscitation efforts based upon evidence at the</p> <p>18 jail based upon evidence you reviewed, true?</p> <p>19 A. True.</p> <p>20 MR. HARRINGTON: Performed by Dr. Patell.</p> <p>21 THE WITNESS: Patell and the personnel at</p> <p>22 the jail who started before he did and assisted.</p> <p>23 Q. (By Mr. O' Loughlin) Okay. So we get a</p> <p>24 clear record, you don't have any criticisms of the</p> <p>25 resuscitation effort at the jail by anyone, true?</p> <p style="text-align: right;">Page 120</p>	<p>1 you want me to go through that in detail?</p> <p>2 Q. No. I want to ask the same question with</p> <p>3 a better ending of the terms. If you assume that</p> <p>4 toxic level means a level that would cause a</p> <p>5 patient's death, do you know whether any of the</p> <p>6 drugs found in Mr. Dunigan's system were at a level</p> <p>7 which would cause the patient's death?</p> <p>8 MR. HARRINGTON: Form and foundation.</p> <p>9 THE WITNESS: Many of the reports do not</p> <p>10 give an actual level. For example, having</p> <p>11 amphetamine in the system is a potential risk for</p> <p>12 cardiovascular instability. Having cocaine</p> <p>13 metabolites, which to me means cocaine in the</p> <p>14 preceding 4 to 6 days has the potential to cause</p> <p>15 issues with cardiovascular instability.</p> <p>16 Having hydrocodone positive and at a level</p> <p>17 above the therapeutic range has the potential to</p> <p>18 have a respiratory depressant affect. The other</p> <p>19 drugs, Benadryl and Gabapentin, have nothing to do</p> <p>20 with that.</p> <p>21 Q. Are you familiar with the term toxic level</p> <p>22 in the sense that I used it?</p> <p>23 A. I am not exactly sure how you used it.</p> <p>24 You are saying it has the potential for being life</p> <p>25 threatening?</p>

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<p style="text-align: right;">Page 121</p> <p>1 Q. I am saying at a level that would cause 2 death? And if you don't know, you can say you don't 3 know. Are you a toxicologist? 4 A. I am not a toxicologist and I don't use 5 that term that way. 6 Q. All right. I am asking you to assume that 7 that definition of toxic level in context of this 8 question. Are you able to say whether any of the 9 drugs found at autopsy in Mr. Dunigan's system were 10 at a toxic level, meaning a level that would have 11 caused his death? 12 MR. HARRINGTON: Form and foundation. 13 THE WITNESS: In and of itself? 14 Q. (By Mr. O'Loughlin) Each one? 15 A. Yes. I think he had many things in his 16 system but not any single one at a lethal level 17 based on the toxicology. 18 Q. Thank you. 19 Now are you able to say whether the drugs 20 that was found in his system combined, were at a 21 toxic level, again meaning a toxic level as a level 22 that would cause his death? 23 MR. HARRINGTON: Form and foundation. 24 THE WITNESS: I can't say that. I don't 25 have an opinion that says that about the</p>	<p style="text-align: right;">Page 123</p> <p>1 Q. If he fell on his right side and suffered 2 rib fractures, where would you expect them to be? 3 A. Most likely on the right. 4 Q. If the rib fractures detected at autopsy 5 with in the anterior parasternal line would that 6 make you think they were caused during the chest 7 compressions of CPR? 8 A. It is compatible with that. But he had 9 two kinds of trauma, one was prolonged 10 resuscitation, which is the most likely cause. And 11 the other is that he had had a chest wall contusion 12 and a fall, which could contribute. I think more 13 likely it is CPR related. 14 Q. If Mr. Dunigan, as you said earlier, died 15 in the car, would you agree that you could not say 16 to a medical probability that he would have been 17 salvageable if he had been returned to the hospital 18 after the officers stopped to check on him? 19 A. Well, they said they were a minute away 20 and then four blocks away. I think that was time to 21 have returned him to the emergency room and have 22 reassessed and retreated was at that time. 23 I think that going on to jail and then 24 having him assessed and putting him in a wheelchair 25 and take him inside, and he has his event, there was</p>
<p style="text-align: right;">Page 122</p> <p>1 combination. 2 Q. (By Mr. O'Loughlin) Thank you. 3 Based upon your review of the autopsy, was 4 Mr. Dunigan's death caused by anything that the 5 police officers or security guards did to him 6 physically? 7 A. I don't think so, no. 8 Q. Since there was no evidence of trauma in 9 the autopsy, other than the rib fractures, which I 10 believe were attributable to the CPR, did you see 11 any other evidence of trauma, anything that 12 dramatically caused his death? 13 A. There was blood accumulation within the 14 soft tissue of the chest as well as the rib 15 fractures. Rib fractures could have been from the 16 fall and/or CPR, but I see no evidence of excessive 17 force or police action that is reflected in the 18 autopsy. 19 Q. Okay. There were no rib fractures 20 detected at the hospital before he was discharged 21 from the emergency department, were there? 22 A. No. Rib films are notoriously difficult 23 to see. Rib fractures are commonly missed. 24 Q. And which side did he fall on? 25 A. Right.</p>	<p style="text-align: right;">Page 124</p> <p>1 a window of opportunity from the time they stopped 2 the car to take him back. That is why I thought 3 that he could have been saved at that time or 4 preferably earlier when he had signs of medical 5 problems before they even left. 6 Q. All right. That's not my question. First 7 of all, I want to talk from the time the officers 8 stopped to check to him on the way to the jail to 9 the time that you believe he was not salvageable, 10 what was that period of time? 11 A. I don't have an exact number, but it is 12 approximately 15 minutes -- 15. 13 Q. And are you able to state -- 14 (Reporter asking to witness to repeat.) 15 Q. And it was 1-5? 16 A. Yes. 17 Q. If he had been returned to the emergency 18 department by the police officers, what do you 19 expect would have happened? 20 A. I believe we have talked about this 21 already. Are you talking about something new? 22 Q. No. I am talking about every single step 23 from pulling up to the hospital? 24 A. I would expect them to have their -- their 25 flashing lights, their siren, and to have one of the</p>

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<p style="text-align: right;">Page 125</p> <p>1 officers call ahead and say that they were bringing 2 an emergency. 3 I would expect the people in the emergency 4 room to greet them at the place where the road loops 5 around in front of the emergency room and expedite 6 getting him out of the car on a gurney and into the 7 ER. 8 He looked terrible. Then the emergency 9 room physician would see him in an expedited way and 10 start the interventions that I talked about in my 11 report and today. 12 Q. How would you know what interventions to 13 give? 14 A. Well, at the very least they would have 15 evaluated him with a history and then an exam, IV 16 access, labs, supplemental oxygen, and treat the 17 serious potentially life-threatening problems in a 18 differential, which we could have prevented. 19 They already knew him. The simple 20 components of putting on an EKG monitor, obtaining 21 an electrocardiogram and drawing lab work, 22 including an arterial blood gas, starting an IV to 23 give medications. To the extent they thought their 24 was any drugs involved, giving Narcan to reverse 25 drug effects, listening to him, giving him</p>	<p style="text-align: right;">Page 127</p> <p>1 that those separate events and under that 2 hypothetical situation would have allowed him to 3 survive? 4 A. Forty years of doing exactly that, in the 5 ICU and going to the ER to help with people who are 6 being resuscitated is what I have spent my entire 7 career doing. 8 Q. Okay. And based upon that experience I 9 presume you have gone to the ER and have seen people 10 resuscitated without success? 11 A. Oh, yeah. Yes. 12 Q. More often than not, according to your 13 earlier testimony, that even with a witness 14 performing a resuscitation with a cardiac arrest 15 less than 50 percent survive? 16 A. If you wait until people arrest it is much 17 more difficult to have a successful resuscitation. 18 The whole concept that I think is the most important 19 is preventing the arrest by addressing the medical 20 decompensation earlier, otherwise it is too little 21 too late. 22 Q. And had Mr. Dunigan arrested as of the 23 time they stopped to check on him? 24 A. Pardon me? 25 Q. Had Mr. Dunigan arrested as of the time</p>
<p style="text-align: right;">Page 126</p> <p>1 diuretics. Even though he is in renal failure, he 2 is making urine and is on diuretics. And then on 3 the EKG there are specific changes of elevated 4 potassium, which in an emergency then leads to 5 giving the insulin, calcium and bicarb, to initiate 6 resuscitation. Those are the things we talked about 7 before and those are the things I am talking about 8 now. 9 Q. How long would that take? 10 A. Minutes. 11 Q. How many minutes? 12 A. Two or three minutes, put on the oximeter, 13 get a set of vitals signs, listen to him, decide 14 whether you need to intubate or just put on oxygen, 15 obtain an EKG. Those things take minutes. 16 Q. How about labs? 17 A. Some of the labs are point of care labs 18 where as soon as you draw the blood you can run them 19 through a bedside piece of equipment that gives you 20 potassium and sodium, BUN, creatinine and arterial 21 blood gases, those things take less than five 22 minutes to run. To see acidosis, those are things 23 in the emergency room can be done very rapidly. 24 Anywhere else they cannot. 25 Q. And what allows you to offer the opinion</p>	<p style="text-align: right;">Page 128</p> <p>1 they stopped to check on him? 2 A. No. They said he was still breathing and 3 on the rest of the trip had some snoring breathing 4 and the testimony about the sternal rub and moan, 5 and he was still breathing at the jail, that means 6 he had not had a cardiopulmonary arrest in the car 7 during the four minute stop. 8 Q. When did he have the cardiopulmonary 9 arrest? 10 A. Shortly after he arrived in the jail. The 11 moan and the breathing was noted, but by the time 12 they got him inside in the wheelchair, one report 13 says they put an oximeter on and there was no 14 result. They put -- that also gives you a pulse 15 reading. They changed it to another finger. He had 16 none, and then he had arrested. So it is within a 17 very brief time of the time he arrived. The jail 18 police officers did a brief assessment, and then 19 subsequently had no vital signs. So I don't think 20 so it happened while he was in the car during the 21 stop or he would not have been breathing and those 22 things happen later. 23 Q. All right. Let's talk about EMTALA, 24 Doctor. Mr. Harrington has now attempted to 25 establish you are an expert on. What does the</p>

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<p style="text-align: right;">Page 129</p> <p>1 EMTALA statute say?</p> <p>2 A. I am not an experienced person with it. I</p> <p>3 wouldn't pretend to be an expert. I have been</p> <p>4 instructed about how to apply it to my practice and</p> <p>5 I know the emergency room facility people have been</p> <p>6 instructed about how to apply it to them.</p> <p>7 Q. What does EMTALA stand for?</p> <p>8 A. It is not -- in broad lay terms, it is a</p> <p>9 no dumping law where if somebody comes to you, you</p> <p>10 can't just send them away without having at least</p> <p>11 done a screening medical evaluation if they request</p> <p>12 it.</p> <p>13 Q. Do you understand that EMTALA is an</p> <p>14 acronym?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know what it is an acronym for?</p> <p>17 A. It is emergency medicine treatment and</p> <p>18 then I don't know the rest of the numbers or names.</p> <p>19 It is not too important to me.</p> <p>20 Q. Do you know what the statute says?</p> <p>21 A. I told you what I have been told. I have</p> <p>22 not read the law and I do not know what the statute</p> <p>23 says. I have had it interpreted to me by risk</p> <p>24 management people for the hospital as well as</p> <p>25 emergency, the head of the emergency room who deal</p>	<p style="text-align: right;">Page 131</p> <p>1 symptoms, such that the absence of immediate medical</p> <p>2 attention would be expected to result in his death,</p> <p>3 true?</p> <p>4 A. No. In 9 and out of 10 pain --</p> <p>5 Q. True?</p> <p>6 A. He had 9 out of 10 chest pain and I think</p> <p>7 you cannot say based on his presentation that he</p> <p>8 didn't have anything life threatening. That's why</p> <p>9 he was there.</p> <p>10 Q. Okay. But you are not, as I understood</p> <p>11 earlier, you are not critical of the evaluation he</p> <p>12 received in the emergency department, are you?</p> <p>13 A. I am not. You are talking about when he</p> <p>14 presented.</p> <p>15 Q. And what you are saying that his symptoms</p> <p>16 of 9 out of 10 chest pain in and of themselves could</p> <p>17 be a life-threatening condition?</p> <p>18 A. Sure. In a complicated man with</p> <p>19 dialysis, diabetes, heart disease, hypertension and</p> <p>20 previous stroke and dizzy.</p> <p>21 Q. And with the specific history he gave of a</p> <p>22 mechanical fall and trauma to his chest or flank,</p> <p>23 would that explain the source of those same</p> <p>24 complaints?</p> <p>25 A. That was the emergency room physician's</p>
<p style="text-align: right;">Page 130</p> <p>1 with it every day. My kind of involvement was with</p> <p>2 inner facility transport, transfers.</p> <p>3 Q. Do you claim that EMTALA was in any way</p> <p>4 violated by Bronson Hospital up to the point that</p> <p>5 Mr. Dunigan was discharged from the emergency</p> <p>6 department and wheeled into the waiting room?</p> <p>7 A. No.</p> <p>8 Q. I think this was covered earlier but I</p> <p>9 should cover it again. Do you know of any evidence</p> <p>10 that while on Bronson's premises any Bronson</p> <p>11 employee actually recognized and had actual</p> <p>12 knowledge that Mr. Dunigan had an emergency medical</p> <p>13 condition?</p> <p>14 MR. HARRINGTON: Form and foundation.</p> <p>15 THE WITNESS: No. It is their subsequent</p> <p>16 testimony that they did not think he had an</p> <p>17 emergency.</p> <p>18 Q. (By Mr. O'Loughlin) You are not aware of</p> <p>19 any evidence to the contrary, true?</p> <p>20 MR. HARRINGTON: Foundation and form.</p> <p>21 THE WITNESS: About their thoughts, I have</p> <p>22 no other information.</p> <p>23 Q. (By Mr. O'Loughlin) At the time he</p> <p>24 initially came to the emergency department via EMS,</p> <p>25 you would agree that Mr. Dunigan did not have severe</p>	<p style="text-align: right;">Page 132</p> <p>1 interpretation. The actual evidence that was a</p> <p>2 mechanical fall, that his cane tip slipped or</p> <p>3 something happened is something I don't see in the</p> <p>4 record. The nurse said he was dizzy, and the</p> <p>5 patient struck the ground after a fall. There was</p> <p>6 no loss of consciousness, despite what Dr. Schwartz</p> <p>7 says, and I think it probably is a mechanical fall.</p> <p>8 But it is not a mechanical fall as described by the</p> <p>9 patient, I didn't think.</p> <p>10 That was the conclusion made, but I think</p> <p>11 that to ignore the fact that the guy had heart</p> <p>12 disease, was dizzy, and not evaluate his cardiac</p> <p>13 condition is one of the questions in the care that I</p> <p>14 assume will be addressed by the emergency room</p> <p>15 expert for the plaintiffs. That is Saul Levine.</p> <p>16 Q. Did Mr. Dunigan give the history that his</p> <p>17 chest pain complaints were caused by a fall where he</p> <p>18 hit his chest or right flank?</p> <p>19 A. Yes, but that's not to say it is</p> <p>20 mechanical, if you are dizzy. Dr. Schartz thinks he</p> <p>21 arrhythmia then. I don't see evidence for either as</p> <p>22 being definitive. I suppose you can call it a</p> <p>23 mechanical fall because he hit the ground, but what</p> <p>24 caused the fall. That is the ultimate question</p> <p>25 about whether it is mechanical or not.</p>

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<p style="text-align: right;">Page 133</p> <p>1 Q. Given his history of a fall, which the</p> <p>2 patient reported, was the source of his chest pain</p> <p>3 was he reasonably screened when he was in the</p> <p>4 emergency department?</p> <p>5 MR. HARRINGTON: Objection to form.</p> <p>6 THE WITNESS: You want to talk standard of</p> <p>7 care for the emergency room evaluation? I thought</p> <p>8 that was going to be somebody else?</p> <p>9 MR. HARRINGTON: Doctor, go ahead. He</p> <p>10 asked you a question. Go ahead and answer as you</p> <p>11 see fit.</p> <p>12 THE WITNESS: I think anybody with a known</p> <p>13 cardiac disease, previous MI on dialysis with a fall</p> <p>14 with chest discomfort needs to be put on an EKG</p> <p>15 monitor and have a 12-lead electrocardiogram done at</p> <p>16 a minimum, as well as having lab work done about the</p> <p>17 status of his metabolic situation as a diabetic with</p> <p>18 end stage renal disease.</p> <p>19 Q. Do you recognize this is not a negligence</p> <p>20 or a malpractice case?</p> <p>21 A. Yes.</p> <p>22 MR. HARRINGTON: Well, I would object.</p> <p>23 That is currently pending in this action.</p> <p>24 MR. O'LOUGHLIN: That is the one we are</p> <p>25 taking the deposition in, Jim. I guess we are going</p>	<p style="text-align: right;">Page 135</p> <p>1 complaint that wouldn't have been things that I</p> <p>2 would have been responsible for, or the way I would</p> <p>3 have said them. They were prepared at the beginning</p> <p>4 of the case by the attorneys involved and some of</p> <p>5 the things in that are not the things that I would</p> <p>6 have put in.</p> <p>7 Q. Do you recall my question?</p> <p>8 A. Yes.</p> <p>9 Q. My question was, among the things you</p> <p>10 reviewed, on the list of things that you reviewed</p> <p>11 were the Complaint and Amended Complaint, true?</p> <p>12 A. Yes.</p> <p>13 Q. Do you understand the case against Bronson</p> <p>14 Methodist Hospital are pending currently in federal</p> <p>15 court in which they supposedly today allege any</p> <p>16 liability on the part of Bronson other than for an</p> <p>17 alleged violation of EMTALA?</p> <p>18 A. I think that is the bulk of the Complaint.</p> <p>19 What I am referring to is the historical description</p> <p>20 in the Complaint that describes his condition.</p> <p>21 Q. Assuming that the only theory of liability</p> <p>22 against Bronson, in this pending lawsuit, is for a</p> <p>23 violation of EMTALA. You have agreed that Bronson</p> <p>24 did not violate EMTALA at any point up until Mr.</p> <p>25 Dunigan was discharged from the emergency room</p>
<p style="text-align: right;">Page 134</p> <p>1 to have to take his deposition again.</p> <p>2 MR. HARRINGTON: Yes, I know. We will.</p> <p>3 That's what I am saying, we will. When you said</p> <p>4 this case, I don't know if you are referring to</p> <p>5 solely the case number, you know, that has a EMTALA</p> <p>6 case or in a broad sense the case referring to the</p> <p>7 care and treatment of Mr. Dunigan.</p> <p>8 MR. O'LOUGHLIN: To my knowledge there is</p> <p>9 no other case.</p> <p>10 MR. HARRINGTON: Not yet.</p> <p>11 MR. O'LOUGHLIN: Which means at present,</p> <p>12 when I am asking the question there is no other</p> <p>13 case, true?</p> <p>14 MR. HARRINGTON: No, there has not been</p> <p>15 one filed. I just want to make sure our definitions</p> <p>16 of the case are the same. Sometimes physicians</p> <p>17 would use the word case as in the entire care and</p> <p>18 treatment of the patient, and sometimes us lawyers</p> <p>19 when we say case, all we are referring to is just</p> <p>20 the current case number. That is all. I just want</p> <p>21 to make sure we are on the same page.</p> <p>22 Q. (By Mr. O'Loughlin) Doctor, amongst the</p> <p>23 things you reviewed were the Complaint and Amended</p> <p>24 Complaint, true?</p> <p>25 A. I think there were comments in the</p>	<p style="text-align: right;">Page 136</p> <p>1 department to the waiting room, true?</p> <p>2 A. Yeah. I think I said that before.</p> <p>3 Q. After that time you would agree that there</p> <p>4 was never another time when Mr. Dunigan presented to</p> <p>5 the emergency room department seeking medical care,</p> <p>6 true?</p> <p>7 A. True.</p> <p>8 Q. And you agree that based upon your review</p> <p>9 and everything you have seen in the case, no one</p> <p>10 from Bronson Hospital ever actually determined that</p> <p>11 Mr. Dunigan had a life-threatening emergency medical</p> <p>12 condition, true?</p> <p>13 MR. HARRINGTON: Objection to form.</p> <p>14 THE WITNESS: Yes. There is nothing that</p> <p>15 says they thought that. No one asked him if he</p> <p>16 wanted to be seen again as far as I could tell.</p> <p>17 Q. (By Mr. O'Loughlin) And he never said he</p> <p>18 wanted to be seen again, true?</p> <p>19 A. Again, true.</p> <p>20 Q. Mr. Harrington asked you about the nurses</p> <p>21 interaction with Mr. Dunigan, and I believe he was</p> <p>22 referring to him while he was in the waiting room.</p> <p>23 Are you aware of any intervention between the nurses</p> <p>24 or medical assistants sitting at the desk in the</p> <p>25 video and Mr. Dunigan?</p>

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<p style="text-align: right;">Page 137</p> <p>1 A. There is one note I had in the eight pages</p> <p>2 of notes about the 9 video tapes that he looked up</p> <p>3 to the triage area but there was no interaction that</p> <p>4 I could detect.</p> <p>5 Q. Are you aware of any evidence in that the</p> <p>6 nurses or medical assistants sitting next to the</p> <p>7 desk adjacent to the waiting room ever determined</p> <p>8 actually that Mr. Dunigan had an emergency medical</p> <p>9 condition?</p> <p>10 A. Again, no.</p> <p>11 Q. After he was discharged?</p> <p>12 A. Correct.</p> <p>13 MR. O'LOUGHLIN: Thank you, Doctor. That</p> <p>14 is all I have.</p> <p>15 MR. HARRINGTON: Anything, Allan?</p> <p>16 MR. VANDERLAAN: No. I am good.</p> <p>17 EXAMINATION</p> <p>18 BY MR. HARRINGTON:</p> <p>19 Q. I have one question, Doctor. What?</p> <p>20 MR. O'LOUGHLIN: I just said he said no.</p> <p>21 Q. (By Mr. Harrington) I have just have one</p> <p>22 question, Doctor.</p> <p>23 Should the Bronson staff previously</p> <p>24 identified reasonably have known that Mr. Dunigan</p> <p>25 was suffering from a life-threatening medical</p>	<p style="text-align: right;">Page 139</p> <p>1 A. Correct.</p> <p>2 MR. O'LOUGHLIN: Thank you.</p> <p>3 MR. HARRINGTON: I have a question. What</p> <p>4 about the women that we see working at the</p> <p>5 administration desk within eyeshot of Mr. Dunigan,</p> <p>6 would they be included in that as well?</p> <p>7 MR. O'LOUGHLIN: Form and foundation.</p> <p>8 THE WITNESS: They had the opportunity but</p> <p>9 based on their deposition testimony, the</p> <p>10 registration folks and triage nurse, they had no</p> <p>11 awareness.</p> <p>12 The question is whether they should have</p> <p>13 had an awareness, I think, falls mainly to the</p> <p>14 security officers who see that he can't stand up and</p> <p>15 when he gets outside there that the registration and</p> <p>16 triage people would not have that opportunity.</p> <p>17 The only opportunity I saw was when he</p> <p>18 tried to stand up and stumbled forward and needed</p> <p>19 two people who helped him get in the wheelchair.</p> <p>20 That is a potential opportunity, and I don't have</p> <p>21 detailed information. I know they didn't get</p> <p>22 involved.</p> <p>23 MR. HARRINGTON: Thank you, Doctor. I am</p> <p>24 done.</p> <p>25 MR. O'LOUGHLIN: Thank you, Doctor.</p>
<p style="text-align: right;">Page 138</p> <p>1 condition at the time -- I am sorry -- after his</p> <p>2 discharge?</p> <p>3 A. Yes.</p> <p>4 MR. HARRINGTON: Okay.</p> <p>5 EXAMINATION</p> <p>6 BY MR. O'LOUGHLIN:</p> <p>7 Q. Oh, Jim.</p> <p>8 Which of the Bronson staff should have</p> <p>9 recognized that, Doctor?</p> <p>10 A. The security officers who were interacting</p> <p>11 with him about leaving the emergency room, getting</p> <p>12 him into the wheelchair, getting him out of the</p> <p>13 wheelchair onto the ground. There were four of them,</p> <p>14 I believe, who were involved.</p> <p>15 Q. Any other Bronson staff or employee who</p> <p>16 you believe should have recognized Mr. Dunigan had</p> <p>17 an emergency medical condition?</p> <p>18 A. I don't have detailed information about</p> <p>19 the triage nurse at the time, but based on the</p> <p>20 deposition it seemed that she did not have any</p> <p>21 specific information. It is the security officers.</p> <p>22 Q. Okay. So when Mr. Harrington asked you</p> <p>23 about the Bronson staff you said they should have</p> <p>24 recognized an emergency medical condition, you were</p> <p>25 talking only about security guards, true?</p>	<p style="text-align: right;">Page 140</p> <p>1 THE WITNESS: Stipulations? Do I need to</p> <p>2 read?</p> <p>3 MR. VANDERLAAN: They don't do that in</p> <p>4 Michigan that I know of.</p> <p>5 MR. HARRINGTON: Michigan doesn't have the</p> <p>6 read and sign like Ohio or some other states do that</p> <p>7 you fill out an erata sheet. We don't have that.</p> <p>8 (Whereupon the deposition was concluded at</p> <p>9 1:51 p.m.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 State of Colorado)
 2) ss
 3 County of Gunnison)
 4
 5 REPORTER'S CERTIFICATE
 6
 7 I, Ruth E. Collins, do hereby certify that
 8 I am a Registered Professional Reporter and Notary
 9 Public within the State of Colorado; that previous
 10 to the commencement of the examination, the deponent
 11 was duly sworn to testify to the truth.
 12
 13 I further certify that this deposition was
 14 taken in shorthand by me at the time and place
 15 herein set forth, and that the foregoing constitutes
 16 a true and correct transcript.
 17
 18 I further certify that I am not related
 19 to, employed by, nor of counsel for any of the
 20 parties or attorneys herein, nor otherwise
 21 interested in the result of the within action.
 22
 23 In witness whereof, I have affixed my
 24 signature this 22nd day of February, 2018.
 25 My commission expires December 15, 2020.

 Ruth E. Collins, RPR, CSR
 73 Slate Lane
 Crested Butte, CO 81224

Exhibit 6

In the Matter Of:

DUNIGAN vs BRONSON METHODIST HOSPITAL

SAUL LEVINE, M.D.

February 27, 2018

Prepared for you by



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw • Troy

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Page 1	Page 3
<p>1 UNITED STATES DISTRICT COURT</p> <p>2 WESTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4 GORDA DUNIGAN, as Personal</p> <p>Representative for the ESTATE</p> <p>5 OF JAMES DUNIGAN, Deceased,</p> <p>6 Plaintiff,</p> <p>7 vs. CASE NO. 1:16:CV-01324</p> <p>8 BRONSON METHODIST HOSPITAL,</p> <p>9 Defendant.</p> <hr/> <p>10</p> <p>11 GORDA DUNIGAN, as Personal</p> <p>Representative for the ESTATE</p> <p>12 OF JAMES DUNIGAN, Deceased,</p> <p>13 Plaintiff,</p> <p>14 vs. CASE NO. 1:16:CV-01325</p> <p>15 DEREK NUGENT, et al.,</p> <p>16 Defendants.</p> <hr/> <p>17</p> <p>18 VIDEOCONFERENCE DEPOSITION OF EXPERT SAUL LEVINE, M.D.</p> <p>19</p> <p>20 February 27, 2018</p> <p>21 8:03 a.m.</p> <p>22 1230 Columbia Street, Suite 400</p> <p>23 San Diego, California</p> <p>24</p> <p>25 REPORTED BY: Renée C. Roberts, CSR No. 6910</p>	<p>1 INDEX TO EXAMINATION</p> <p>2</p> <p>3 WITNESS: SAUL LEVINE, M.D</p> <p>4 EXAMINATION PAGE</p> <p>5 By Mr. O'Loughlin 5, 119, 144</p> <p>6 By Mr. VanderLaan 109, 115</p> <p>7 By Mr. Harrington 112, 141</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 For Plaintiff:</p> <p>4 FIEGER, FIEGER, KENNEY & HARRINGTON</p> <p>JAMES J. HARRINGTON</p> <p>19390 West 10 Mile Road</p> <p>5 Southfield, Michigan 48075</p> <p>248.355.5555</p> <p>6 j.harrington@fiegerlaw.com</p> <p>7</p> <p>8 For Defendant Bronson Methodist Hospital:</p> <p>9 SMITH HAUGHEY RICE & ROEGGE</p> <p>JOHN C. O'LOUGHLIN</p> <p>10 100 Monroe Center NW</p> <p>Grand Rapids, Michigan 49503</p> <p>11 616.774.8000</p> <p>joloughlin@shrr.com</p> <p>12</p> <p>13</p> <p>14 For Defendants Nugent, et al.:</p> <p>15 CUMMINGS MCCLOREY DAVIS & ACHO, PLC</p> <p>ALLAN C. VANDERLAAN</p> <p>16 2851 Charlevoix Drive SE, Suite 327</p> <p>Grand Rapids, Michigan 49546</p> <p>17 616.975.7470</p> <p>avanderlaan@cnda-law.com</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 INDEX TO EXHIBITS</p> <p>2 EXPERT</p> <p>3 SAUL LEVINE, M.D</p> <p>4 Dunigan vs. Bronson Methodist Hospital, et al.</p> <p>5 Tuesday, February 27, 2018</p> <p>6 Renée C. Roberts, CSR No. 6910</p> <p>7</p> <p>8 MARKED DESCRIPTION PAGE</p> <p>9 Exhibit 1 Life EMS Ambulance records 19</p> <p>10 Exhibit 2 Excerpts from Harwood-Nuss' 21</p> <p>Clinical Practice of Emergency</p> <p>11 Medicine, Fourth Edition</p> <p>12 Exhibit 3 Article from Nephrology entitled 22</p> <p>"Serum Potassium Levels and</p> <p>13 Mortality in Hemodialysis Patients:</p> <p>A Retrospective Cohort Study"</p> <p>14</p> <p>15 Exhibit 4 EMTALA statute 23</p> <p>16 Exhibit 5 Handwritten notes made by witness 24</p> <p>from review of Borgess records</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 5</p> <p>1 San Diego, California; 2 Tuesday, February 27, 2018; 8:03 a.m. 3 4 SAUL LEVINE, M.D., 5 having been first duly sworn, 6 was examined and testified as follows: 7 8 MR. O'LOUGHLIN: Thank you. And the record 9 should reflect that this is the deposition of Dr. Saul 10 Levine, taken for all purposes allowed under the Federal 11 Rules of Civil Procedure and the Federal Rules of 12 Evidence. 13 14 EXAMINATION 15 BY MR. O'LOUGHLIN: 16 Q. Would you state your name, please. 17 A. Saul Levine. Last name is Levine, L-e-v-i-n-e. 18 Q. You are a medical doctor? 19 A. Yes. 20 Q. Specializing and board certified in emergency 21 medicine? 22 A. Correct. 23 Q. Do you hold any other board certifications? 24 A. No. 25 Q. Do you consider yourself a specialist in any</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Would you -- you've included now palpitations or 2 an irregular heartbeat, shortness of breath. Would you 3 also include difficulty breathing? 4 A. Yes. 5 Q. Would you include chest pain? 6 A. Could get. 7 Q. Would you include nausea? 8 A. You could have. 9 Q. Vomiting? 10 A. Suppose so. I'm not sure. 11 Q. Tingling of the skin or numbness? 12 A. Yes. 13 Q. Could you tell me the clinical signs and 14 symptoms of fluid retention. 15 Actually, let me change that. Let me talk about 16 the signs and symptoms -- clinical signs and symptoms of 17 congestive heart failure. 18 A. Okay. You want to know what the signs and 19 symptoms of heart failure are? 20 Q. Correct. 21 A. Well, classically, fluid backs up, the heart is 22 unable to pump it, so some of the places it backs up is 23 into the legs. It can back up into the lungs. That 24 would cause respectively leg swelling and shortness of 25 breath. It can back up further into the liver and can</p>
<p style="text-align: right;">Page 6</p> <p>1 other medical specialty, aside from emergency medicine? 2 A. No. 3 Q. Have you ever worked or had training as a nurse? 4 A. No. 5 Q. Have you ever worked or had training as a law 6 enforcement officer? 7 A. No. 8 Q. Have you ever worked or had training as a 9 hospital security officer? 10 A. No. 11 Q. Would you, based upon your -- everything you 12 know, give -- tell me the signs and symp- -- the clinical 13 signs and symptoms of hyperkalemia. 14 A. Hyperkalemia can be quite vague. You can have 15 very few symptoms and have life-threatening hyperkalemia. 16 You can have no symptoms and have life-threatening 17 hyperkalemia. Commonly, however, you would get weakness, 18 fatigue, sometimes burning pain. 19 Q. Any others come to mind? 20 A. Well, at some point, hyperkalemia can cause your 21 heart to cease beating or to beat fast or to beat slow. 22 And in the circumstance where it's beating fast or slow, 23 you can have symptoms from that, of course. Shortness of 24 breath. You could have passing out episodes, 25 palpitations and so on.</p>	<p style="text-align: right;">Page 8</p> <p>1 cause liver damage and abdominal pain. You can have, you 2 know, other things go sour from heart failure, including 3 like we talked about. Within hyperkalemia you can have 4 funny heart rhythms, you can have your heart beat 5 irregularly or fast or cease beating. 6 Q. Okay. And swelling of the legs could also be 7 described as edema? 8 A. Correct. 9 Q. And you included shortness of breath? 10 A. Yes. 11 Q. And would you also include difficulty breathing 12 when laying flat? 13 A. Can happen. Yes. 14 Q. And could you describe for me the clinical signs 15 and symptoms of a diabetic episode or diabetes? 16 A. You want to know the signs and symptoms of 17 diabetes? 18 Q. More of a diabetic emergency. 19 A. Well, you know, the sort of most common 20 worrisome diabetic emergencies are low sugar or high 21 sugar. And with -- 22 Q. I'm sorry. Let me stop you there. Where would 23 you put those parameters? 24 A. Oh, it depends. You know, when you get a 25 glucose below 60, 50, 40, that becomes worrisome for too</p>

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<p style="text-align: right;">Page 9</p> <p>1 low.</p> <p>2 And high is -- again, it depends on the clinical</p> <p>3 setting. The most worrisome high glucose phenomenon is</p> <p>4 where you get acidosis or an abnormal pH balance in the</p> <p>5 blood associated with high sugar, and that acidosis can</p> <p>6 actually occur at levels, you know, in the 100s, that</p> <p>7 would be atypical. Usually in the higher numbers, like,</p> <p>8 you know, 3-, 4-, 500s.</p> <p>9 Q. With diabetic emergency, can you also feel sick</p> <p>10 or faint?</p> <p>11 A. Yes.</p> <p>12 Q. All right. We are taking your deposition</p> <p>13 because you've been identified as an expert on behalf of</p> <p>14 the plaintiff in this case. I assume you're aware of</p> <p>15 that?</p> <p>16 A. Yes.</p> <p>17 Q. How often have you acted as an expert in</p> <p>18 litigation? And I would include in that anytime you have</p> <p>19 been -- you have reviewed records and/or testified.</p> <p>20 A. How often? Well, the number of depositions I've</p> <p>21 been involved with is about 5 or maybe this is 6,</p> <p>22 somewhere around there. I've reviewed many more cases</p> <p>23 than that. Oftentimes I'll get a case that I don't</p> <p>24 believe to be meritorious and reject it, and there are</p> <p>25 other cases that I have reviewed and are in progress</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. Have you worked with Mr. Harrington's firm in</p> <p>2 the past?</p> <p>3 A. Yes.</p> <p>4 Q. On how many occasions?</p> <p>5 A. The majority of my cases have been through the</p> <p>6 Fieger firm. I don't know the numbers offhand.</p> <p>7 Q. And when you -- again describing cases, is that</p> <p>8 the 20 to 30 that we arrived at earlier?</p> <p>9 A. Yeah. Again, rough estimate.</p> <p>10 Q. And so the majority of that 20 to 30 would be</p> <p>11 from the Fieger firm?</p> <p>12 A. Overall, I would maybe estimate a small majority</p> <p>13 overall of the cases is from that firm.</p> <p>14 Q. Of those cases, how many involved claims of</p> <p>15 negligence against a healthcare provider?</p> <p>16 A. Well, all of them. They're medical malpractice</p> <p>17 cases generally. And this case being a little unusual in</p> <p>18 that regard, I wouldn't call this a med mal. Rather, you</p> <p>19 know, this EMTALA issue we'll get into, I'm sure.</p> <p>20 Q. So all the cases that you've reviewed at the</p> <p>21 request of the Fieger firm have been cases to determine</p> <p>22 whether you thought a healthcare professional was</p> <p>23 negligent?</p> <p>24 A. Actually, that's not totally true now. I think</p> <p>25 in retrospect, there's a case I have that it's an issue</p>
<p style="text-align: right;">Page 10</p> <p>1 prior to deposition. Hard for me to put a number on it.</p> <p>2 I would estimate maybe, you know, 5 to 10 of those.</p> <p>3 Q. So are those 5 to 10 in addition to the 5 to 6</p> <p>4 you've given depositions in?</p> <p>5 A. Yes.</p> <p>6 Q. So your total number of reviews in medicolegal</p> <p>7 cases would be less than 20?</p> <p>8 A. No, that's not true. Because as I said, there's</p> <p>9 several cases where I've been involved and declined the</p> <p>10 case after review of records.</p> <p>11 Q. So that would be -- I'm sorry. Go ahead.</p> <p>12 A. So I don't know the true numbers.</p> <p>13 Q. If you add in the cases that you've reviewed,</p> <p>14 but have not supported, you can't come up with an</p> <p>15 estimate as to the number of cases total?</p> <p>16 A. It would be difficult for me to do that now. I</p> <p>17 would say, you know, 20 to 30 maybe.</p> <p>18 Q. Whatever that number is, can you break it down</p> <p>19 between cases in which you've been contacted by the</p> <p>20 attorney representing the plaintiff, as opposed to the</p> <p>21 attorney representing the defendant?</p> <p>22 A. I have had a handful of defendant cases. Those</p> <p>23 are typically local cases. I've been deposed in just one</p> <p>24 of those. And the majority of my work comes from</p> <p>25 out-of-town plaintiff's work.</p>	<p style="text-align: right;">Page 12</p> <p>1 of institutional liability. There's another case that --</p> <p>2 I think there are two like that, where it's more a</p> <p>3 question of institutional liability, rather than</p> <p>4 physician or medical malpractice.</p> <p>5 Does that make sense?</p> <p>6 Q. It may. But to clarify, what do you mean by</p> <p>7 "institutional liability"?</p> <p>8 A. There was a -- I don't know how much of this is</p> <p>9 able to be disclosed. There's a case where a patient had</p> <p>10 an injury on a facility's property and it wasn't felt</p> <p>11 that there was medical malpractice, but the patient had</p> <p>12 an injury that was felt to be related to the policies of</p> <p>13 the facility regarding fall prevention.</p> <p>14 Q. Okay. And is there -- so that had to do with</p> <p>15 fall prevention in terms of the condition of the premises</p> <p>16 or fall prevention in terms of the care or anything else</p> <p>17 to do with the specific individual?</p> <p>18 A. I'm not sure I understand your question.</p> <p>19 Q. So, for instance, and I -- the description was</p> <p>20 general enough, I don't know if that meant it was a fall</p> <p>21 by a patient?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. It was a fall by a patient. Was it a</p> <p>24 fall by a patient in the course of being cared for?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 13</p> <p>1 Q. Was it a fall by a patient during some transfer?</p> <p>2 A. Transfer outside of the facility? No.</p> <p>3 Q. Okay. Was your claim in that case that there</p> <p>4 was something wrong with the hospital's policy?</p> <p>5 A. That case is too early to really answer that</p> <p>6 question. It's in the infantile stages.</p> <p>7 Q. All right. What's the other case where you</p> <p>8 found -- or you were asked to look at what you thought</p> <p>9 was institutional liability?</p> <p>10 A. Let me think. I can't recall at the moment,</p> <p>11 actually. Hang on. I'm trying to think of the specifics</p> <p>12 of the case in my mind and I can't get it because of the</p> <p>13 previous discussion. I don't recall.</p> <p>14 Q. Okay. What do you charge for your time?</p> <p>15 A. 450 an hour.</p> <p>16 Q. Is that for any activity or some specific</p> <p>17 activity?</p> <p>18 A. That's for review of materials and reading, you</p> <p>19 know, phone time and so on. I have deposition --</p> <p>20 Q. Do you --</p> <p>21 A. Deposition charges are different.</p> <p>22 Q. And what are the deposition charges?</p> <p>23 A. \$1,600 for the -- any part of the first two</p> <p>24 hours. And then \$800 an hour after that.</p> <p>25 Q. And do you have some different rate or charge if</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. I do.</p> <p>2 A. So that outlines what I've reviewed and what my</p> <p>3 opinions are.</p> <p>4 Q. So that would be the records from Bronson</p> <p>5 Hospital. And specifically the emergency department</p> <p>6 visit from May 6, 2016?</p> <p>7 A. Yes.</p> <p>8 Q. The Kalamazoo County Jail medical records from</p> <p>9 May 6?</p> <p>10 A. Yes.</p> <p>11 Q. Security video footage from -- I presume that's</p> <p>12 the Bronson video footage from May 6?</p> <p>13 A. Yes.</p> <p>14 Q. The records of the Kalamazoo -- you had</p> <p>15 Kalamazoo County Sheriff's Department?</p> <p>16 A. Yes.</p> <p>17 Q. The -- you have -- again you have -- I'm reading</p> <p>18 from your report, "Sheriff car video footage from May 6,</p> <p>19 2016"?</p> <p>20 A. Yes.</p> <p>21 Q. The -- by the way, do you know if they -- if the</p> <p>22 footage you're talking about is when Mr. Dunigan is in</p> <p>23 the back of the police car?</p> <p>24 A. Yes, it's him getting loaded into the car and</p> <p>25 then driving and so on.</p>
<p style="text-align: right;">Page 14</p> <p>1 you appear at trial?</p> <p>2 A. I've only appeared at trial once and there was</p> <p>3 a -- it was different. I didn't charge by the hour to</p> <p>4 fly out there and so on. It was rather a fee to go.</p> <p>5 So does that answer your question?</p> <p>6 Q. What is that fee?</p> <p>7 A. I was paid 10,000 to go from San Diego to</p> <p>8 Detroit, you know, spend the night, appear in court and</p> <p>9 return.</p> <p>10 Q. And that was a case for the Fieger office?</p> <p>11 A. Yes.</p> <p>12 Q. When were you contacted regarding this case?</p> <p>13 A. I was looking back to try to figure that out. I</p> <p>14 think it was the summer of -- hang on a sec. I might</p> <p>15 have it. Yeah, the summer of -- last summer of 2017.</p> <p>16 Q. How were you contacted?</p> <p>17 A. I believe somebody in the Fieger firm, may have</p> <p>18 been Mr. Harrington, contacted me and discussed the case</p> <p>19 with me, you know. As per usual, these discussions are</p> <p>20 sort of in broad strokes and then records are sent. And</p> <p>21 I review them and render an opinion.</p> <p>22 Q. Are you able to identify what you reviewed</p> <p>23 initially in order to render an initial opinion?</p> <p>24 A. Yes. I assume you have my report from November</p> <p>25 of 2017?</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Okay. And just so there's no confusion, you're</p> <p>2 not -- you don't really know whether that's a Sheriff or</p> <p>3 a Kalamazoo Police officer car?</p> <p>4 A. Correct. I may have lumped them together, or</p> <p>5 misstated that.</p> <p>6 Q. You also have listed "Investigation report"</p> <p>7 under that, would that be an investigation report from</p> <p>8 the whatever law enforcement agency was involved?</p> <p>9 A. Yes.</p> <p>10 Q. You have the "Postmortem Examination Report,"</p> <p>11 would that otherwise also be called an autopsy report?</p> <p>12 A. Yes.</p> <p>13 Q. You have the "Death Certificate"?</p> <p>14 A. Yes.</p> <p>15 Q. "Toxicology Report from AIT Labs"?</p> <p>16 A. Yes.</p> <p>17 Q. The "Prehospital Care Report" from Life EMS</p> <p>18 Ambulance?</p> <p>19 A. Correct.</p> <p>20 Q. And you have listed two depositions, Charles</p> <p>21 Shoemaker and Nolan Cattell?</p> <p>22 A. Right. Correct.</p> <p>23 Q. Correct?</p> <p>24 Have you reviewed any other depositions?</p> <p>25 A. Yes. I have read the deposition of Dr. Rigot</p>

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<p style="text-align: right;">Page 17</p> <p>1 and Dr. Patel.</p> <p>2 Q. Any others?</p> <p>3 A. Other depositions, no. I've seen reports --</p> <p>4 I've seen reports from several physicians. There was a</p> <p>5 Dr. Richardson, Dr. Landers, Dr. Von something. I don't</p> <p>6 know if I have that. These were received electronically,</p> <p>7 so I don't have them in front of me.</p> <p>8 MR. O'LOUGHLIN: Counsel, can I presume those</p> <p>9 are the same reports that have been submitted to the</p> <p>10 court?</p> <p>11 MR. HARRINGTON: That's correct.</p> <p>12 MR. O'LOUGHLIN: All right. Thank you.</p> <p>13 BY MR. O'LOUGHLIN:</p> <p>14 Q. The last thing you listed is -- in your report</p> <p>15 is "Records from Borgess Medical Center." Do you know</p> <p>16 what records you reviewed from Borgess Medical Center?</p> <p>17 A. It was an electronic file. It was voluminous,</p> <p>18 almost 3,000 pages. And it was records of previous ER</p> <p>19 visits and hospitalizations at Borgess. It was</p> <p>20 electronic.</p> <p>21 Q. Did you -- I'm sorry, go ahead.</p> <p>22 A. It was electronic. It was shared with me via</p> <p>23 Dropbox.</p> <p>24 Q. Did you review those 3,000 pages?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 19</p> <p>1 from Life EMS?</p> <p>2 A. It's here. I don't know how many this is. I</p> <p>3 can submit this to you, if you want (indicating). I</p> <p>4 would say what, that's about a half inch maybe.</p> <p>5 Q. You have a half inch of records from Life EMS?</p> <p>6 A. Yeah. That's this (indicating).</p> <p>7 Q. And all of that is Life EMS?</p> <p>8 A. Yes.</p> <p>9 Q. And is that related to more than one run by Life</p> <p>10 EMS?</p> <p>11 A. Oh, absolutely. It's tons of them. Yeah. I</p> <p>12 was really just interested in the one that I couldn't</p> <p>13 read with the Borgess records.</p> <p>14 Q. Okay. And I -- my only confusion is I don't</p> <p>15 think I ever obtained those records.</p> <p>16 MR. O'LOUGHLIN: So if I can get them quickly</p> <p>17 and easily, can we have that packet marked as Deposition</p> <p>18 Exhibit 1. And the packet I mean, it's just the Life EMS</p> <p>19 records.</p> <p>20 (Exhibit 1 marked)</p> <p>21 THE WITNESS: It's the Life EMS records I</p> <p>22 earmarked here with two stickies here, the date of</p> <p>23 concern, which is the 6th of May.</p> <p>24 BY MR. O'LOUGHLIN:</p> <p>25 Q. Okay. But everything in that packet that is</p>
<p style="text-align: right;">Page 18</p> <p>1 Q. In reviewing those 3,000 pages, did you find any</p> <p>2 instances where you thought the care was inappropriate or</p> <p>3 fell below the standard of care?</p> <p>4 A. No.</p> <p>5 Q. Did that -- did those records include</p> <p>6 Mr. Dunigan's latest admission to Borgess Medical Center?</p> <p>7 A. Yes. The admission immediately preceding or the</p> <p>8 admission preceding his presentation at -- at Bronson,</p> <p>9 yes.</p> <p>10 Q. Okay. And you reviewed those records?</p> <p>11 A. Yes.</p> <p>12 Q. Anything else you've reviewed related to this</p> <p>13 case?</p> <p>14 A. I obtained, through the firm, the pre-hospital</p> <p>15 care records, so the ambulance transportation records.</p> <p>16 No other sort of documents, though, that I can think of.</p> <p>17 Q. And when you say "pre-hospital," you're talking</p> <p>18 about the ambulance run that brought Mr. Dunigan to</p> <p>19 Bronson Hospital emergency department in the early</p> <p>20 morning hours of May 6, 2016?</p> <p>21 A. Yes.</p> <p>22 Q. Did you find that those records were also</p> <p>23 included in the Bronson emergency department records?</p> <p>24 A. Yes. But they were illegible.</p> <p>25 Q. Okay. How many pages of records did you receive</p>	<p style="text-align: right;">Page 20</p> <p>1 going to be marked as Exhibit 1 -- that's all marked as</p> <p>2 Exhibit 1, is all Life EMS records?</p> <p>3 A. Correct. Nothing else.</p> <p>4 Q. What else have you reviewed related to this</p> <p>5 case?</p> <p>6 A. I have the EMTALA statute printed, 10-page</p> <p>7 document. I have, you know, with me I brought a few</p> <p>8 things that I thought were reasonable useful references,</p> <p>9 one regarding dialysis and hyperkalemia. It's an article</p> <p>10 from the Journal of Nephrology. And I photocopied</p> <p>11 several pages out of a textbook called Harwood and Nuss,</p> <p>12 one page on dialysis and electrolyte emergencies and</p> <p>13 another page from the same text on EMTALA and regulatory</p> <p>14 issues.</p> <p>15 Q. And when you say "the same text," that's the</p> <p>16 text you just mentioned?</p> <p>17 A. The textbook Harwood and Nuss, yes. It's an</p> <p>18 emergency medicine text.</p> <p>19 Q. How do you spell Nuss?</p> <p>20 A. N-u-s-s.</p> <p>21 Q. And is that a text that you would reference</p> <p>22 regularly in terms of looking for reliable information on</p> <p>23 emergency medicine or other medical issues?</p> <p>24 A. It's a textbook. So, you know, like any -- any</p> <p>25 textbook, it's sort of to be taken with a grain of salt,</p>

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<p style="text-align: right;">Page 21</p> <p>1 so to speak. It's not an authoritative text necessarily, 2 but a useful reference nonetheless.</p> <p>3 Q. And do you go to it because you think the 4 information contained therein is reliable?</p> <p>5 A. Generally speaking, yes.</p> <p>6 Q. I see the pages and here I'm just trying to get 7 an idea of the volume.</p> <p>8 A. Oh --</p> <p>9 Q. How many pages do you --</p> <p>10 A. It's a few pages. This is the title of the 11 text. This is the -- just one page out of the book 12 regarding hemodialysis and electrolyte abnormalities, and 13 then there's three pages on -- it's basically the chapter 14 on regulatory issues -- well, most of the chapter.</p> <p>15 Q. All right.</p> <p>16 A. So it's only --</p> <p>17 MR. O'LOUGHLIN: Can we have that marked as 18 Exhibit 2. 19 (Exhibit 2 marked)</p> <p>20 BY MR. O'LOUGHLIN:</p> <p>21 Q. And the other -- do you need to take a break? I 22 hope you know, Doctor, you can let me know anytime, we'll 23 take a break to accommodate you.</p> <p>24 A. Thank you.</p> <p>25 Q. The other references you've referred to from</p>	<p style="text-align: right;">Page 23</p> <p>1 MR. O'LOUGHLIN: Can we have that marked as 2 Exhibit 4, please. 3 (Exhibit 4 marked)</p> <p>4 BY MR. O'LOUGHLIN:</p> <p>5 Q. Anything else you've reviewed in relation to 6 this case?</p> <p>7 A. Not that I recall.</p> <p>8 Q. Do you have anything else with you that relates 9 to this case?</p> <p>10 A. Not really. I brought my CV, as you asked. I 11 brought my -- I brought the disks of the footage and the 12 x-ray of the chest, which you, I believe, have. I have 13 some --</p> <p>14 Q. Have you reviewed -- I'm sorry.</p> <p>15 A. I --</p> <p>16 Q. Have you reviewed the x-ray, the images?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Have you -- aside from your report, have 19 you made any notes or other writings related to this 20 case?</p> <p>21 A. Yes. That's what I was going to say, is I 22 did -- because of the volume of the Borgess records, I 23 have some handwritten notes regarding those admissions 24 and hospitalizations. It's a single sheet, handwritten.</p> <p>25 MR. O'LOUGHLIN: Can we have that marked as</p>
<p style="text-align: right;">Page 22</p> <p>1 texts or otherwise, could you identify those and so we 2 can have those marked.</p> <p>3 A. Sure. This is an article from American Journal 4 of Nephrology titled "Serum Potassium Levels and 5 Mortality in Hemodialysis Patients." It's from 2016.</p> <p>6 MR. O'LOUGHLIN: Can we have that marked as 7 Exhibit 3. 8 (Exhibit 3 marked)</p> <p>9 MR. O'LOUGHLIN: Has that now been marked as 10 Exhibit 3?</p> <p>11 THE REPORTER: Yes.</p> <p>12 BY MR. O'LOUGHLIN:</p> <p>13 Q. Is that correct, Doctor?</p> <p>14 A. Yes.</p> <p>15 Q. What other references did you obtain and review 16 in relation to this case?</p> <p>17 A. That's all I brought.</p> <p>18 Q. Did you review anything else that you didn't 19 bring with you?</p> <p>20 A. Not really. I -- you know, I -- like I said, I 21 was given the EMTALA statute.</p> <p>22 Q. Okay. You were given that by whom?</p> <p>23 A. The Fieger firm, to review and discuss.</p> <p>24 Q. And when were you given that?</p> <p>25 A. I think it was last month.</p>	<p style="text-align: right;">Page 24</p> <p>1 Exhibit 5. 2 (Exhibit 5 marked)</p> <p>3 BY MR. O'LOUGHLIN:</p> <p>4 Q. What else did you bring with you at the -- as 5 part of our request?</p> <p>6 A. That's it. The biggest thing is the original 7 packet with all those records I went through with you 8 earlier, the Bronson records and so on. I don't have -- 9 there's nothing else.</p> <p>10 Q. Did you bring any billing records, records of 11 what you've billed in the case?</p> <p>12 A. No.</p> <p>13 Q. Do you know what you've billed in the case so 14 far?</p> <p>15 A. Roughly. I had -- we had sent you a bill 16 previously that was paid. And then ballpark on the 17 number of hours leading up to this deposition, I would 18 say in the 13 to 15 range. I would have to go back and 19 tally it.</p> <p>20 Q. Anything else you brought with you that we 21 haven't identified?</p> <p>22 A. No.</p> <p>23 Q. Anything else you've reviewed related to this 24 case that we haven't identified?</p> <p>25 A. Again, not that I recall, no.</p>

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<p style="text-align: right;">Page 25</p> <p>1 Q. Have you reviewed sufficient information to</p> <p>2 provide us with your opinions today?</p> <p>3 A. Yes.</p> <p>4 Q. Did you ask for any additional information?</p> <p>5 A. No. No.</p> <p>6 Q. At the time you prepared your report, the list</p> <p>7 of items that you reviewed in your report, did that cover</p> <p>8 all of the information you had reviewed at that time?</p> <p>9 A. Yes.</p> <p>10 Q. At that time when you prepared your report, is</p> <p>11 it fair to say you had not reviewed any other expert</p> <p>12 report?</p> <p>13 A. What I had reviewed when I made the record was</p> <p>14 what I put in the record. Is that what you're asking? I</p> <p>15 think you're driving at, did I have access to other</p> <p>16 something?</p> <p>17 Q. Expert reports that you've identified and</p> <p>18 reviewed since.</p> <p>19 A. No. Just the ones we spoke about.</p> <p>20 Q. Before you prepared your report, did you do any</p> <p>21 research or read anything or gather any documents</p> <p>22 regarding EMTALA?</p> <p>23 A. No.</p> <p>24 Q. Do you have any understanding as to the</p> <p>25 difference between an EMTALA claim and a medical</p>	<p style="text-align: right;">Page 27</p> <p>1 THE WITNESS: Well, I would say, again, this</p> <p>2 gets into a lot of legal nuance. I'm not -- I'm not an</p> <p>3 attorney, so I can't really answer the majority of your</p> <p>4 question.</p> <p>5 Medical malpractice, if you want me to speak in</p> <p>6 broad terms, I'll do that. I think, you know, medical</p> <p>7 malpractice claims have to do with standard of care and</p> <p>8 breach of standard of care; whereas, an EMTALA is a</p> <p>9 federal mandate, a statute that requires that patients be</p> <p>10 given a medical screening evaluation for emergency</p> <p>11 medical conditions. And that those conditions are</p> <p>12 addressed, i.e. stabilized prior to transferring or</p> <p>13 discharging patients.</p> <p>14 There's another provision of the statute</p> <p>15 regarding women in labor, and they are similarly</p> <p>16 considered sort of unstable if a woman is in active</p> <p>17 labor.</p> <p>18 BY MR. O'LOUGHLIN:</p> <p>19 Q. In the first part of your answer, you referred</p> <p>20 to a breach of the standard of care. What does standard</p> <p>21 of care mean to you?</p> <p>22 A. Well, it means what -- you know, essentially</p> <p>23 what a physician of like or similar training would do</p> <p>24 under like or similar circumstances. So an emergency</p> <p>25 medicine standard of care would be that sort of minimal</p>
<p style="text-align: right;">Page 26</p> <p>1 malpractice claim?</p> <p>2 A. Yes.</p> <p>3 Q. What's your understanding of the difference?</p> <p>4 MR. HARRINGTON: I'm going to object to the</p> <p>5 form. I mean, in what type of context? I'll object,</p> <p>6 it's kind of a broad question. You know, it may call for</p> <p>7 a legal conclusion. Do you want him to speak generally?</p> <p>8 I mean, can you narrow the question down a little bit?</p> <p>9 MR. O'LOUGHLIN: I don't think so. I want his</p> <p>10 understanding of the difference between those two types</p> <p>11 of claims.</p> <p>12 MR. HARRINGTON: Well, then I'm going to object</p> <p>13 to the form and foundation. Especially with Michigan</p> <p>14 statutory requirements in all case law, interpreting from</p> <p>15 a legal standpoint, there's a lot of differences.</p> <p>16 But go ahead and answer, Doctor.</p> <p>17 MR. O'LOUGHLIN: Counsel, your objection's on</p> <p>18 the record.</p> <p>19 MR. HARRINGTON: And I just told him to answer</p> <p>20 the question to the best of his ability. Thank you.</p> <p>21 MR. O'LOUGHLIN: You can confine your objections</p> <p>22 to those allowed by the court rules, without adding</p> <p>23 verbiage.</p> <p>24 MR. HARRINGTON: I'm allowed to give a factual</p> <p>25 basis for the objection. But thanks for the tutorial.</p>	<p style="text-align: right;">Page 28</p> <p>1 expectation of treatment.</p> <p>2 Q. Have you ever reviewed or offered an opinion</p> <p>3 regarding an alleged violation of EMTALA in any other</p> <p>4 case where you've acted as an expert?</p> <p>5 A. No.</p> <p>6 Q. Had you ever read the EMTALA statute before a</p> <p>7 few months ago, when it was sent to you by plaintiff's</p> <p>8 counsel?</p> <p>9 A. I don't think I had read the actual statute, no.</p> <p>10 Q. Had you read the section of the Harwood and Nuss</p> <p>11 text on EMTALA prior to this case?</p> <p>12 A. I don't recall. But I can tell you that the</p> <p>13 information contained in both the statute and the</p> <p>14 textbook is in fitting with my understanding of EMTALA</p> <p>15 prior to that.</p> <p>16 Q. And what is that understanding of EMTALA prior</p> <p>17 to that?</p> <p>18 A. Well, like I said, it's a federal statute. It's</p> <p>19 a mandate that requires patients get a medical screening</p> <p>20 exam to determine if there's an emergency medical</p> <p>21 condition, and that that condition be addressed and</p> <p>22 stabilized prior to the patient being discharged or</p> <p>23 transferred.</p> <p>24 Q. Did you -- and I think it's evident in your</p> <p>25 report, you, based upon your review, identified what you</p>

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<p style="text-align: right;">Page 29</p> <p>1 believe to be violations of the standard of care in 2 relation to Mr. Dunigan's care?</p> <p>3 A. Yes.</p> <p>4 Q. Did you identify violations of the standard of 5 care by anyone other than Dr. Rigot?</p> <p>6 A. Violation of the standard of care, not really. 7 Although I believe the patient was discharged in an 8 unstable condition, I don't intend on speaking to the 9 standard of care for nursing, police, security, and so 10 on, as you alluded to early on. But I can certainly say 11 that the patient should not have been discharged in the 12 manner that he was.</p> <p>13 Q. And according to your review and understanding, 14 who was responsible for the decision to discharge?</p> <p>15 A. Well, it's a little bit of a loaded question. I 16 think that Dr. Rigot probably ordered the patient to be 17 discharged. He probably clicked on an icon that said 18 "discharge the patient." You know, the patient 19 subsequently had continued presence in the hospital and 20 remained in the hospital, so discharge in that sense is 21 that the patient was not discharged until he was picked 22 up and sort of, you know, forcibly removed.</p> <p>23 Q. Based upon your review, who made the decision to 24 discharge Mr. Dunigan from the emergency department?</p> <p>25 A. Well, again there's sort of two definitions</p>	<p style="text-align: right;">Page 31</p> <p>1 on standard of care. That's what I've asked him.</p> <p>2 MR. HARRINGTON: I just need that clarification.</p> <p>3 I'm sorry.</p> <p>4 THE WITNESS: I answered yes.</p> <p>5 MR. O'LOUGHLIN: Yes, I heard. Thank you.</p> <p>6 BY MR. O'LOUGHLIN:</p> <p>7 Q. And then all of those 3,000 pages of records 8 from Borgess, you found no instance where any of the care 9 provided in those multiple emergency department 10 individuals, you found no instance where there was a 11 violation of the standard of care?</p> <p>12 A. No. Nothing jumped out to me, although you have 13 to understand I wasn't looking for anything in that -- 14 for that purpose. I was -- I was mainly interested in 15 his recent hospitalization and visit.</p> <p>16 Q. Let's talk about the period of time after 17 Dr. Rigot decided to discharge the patient. Are you 18 aware of any evidence, from anything you've reviewed or 19 know of about this case, that Dr. Rigot was aware of any 20 aspect of Mr. Dunigan's condition after he entered the 21 waiting room?</p> <p>22 A. I don't have any evidence that he knew anything 23 about that.</p> <p>24 Q. Is it fair to say then that you have no 25 criticisms, meaning opinions, that there were violations</p>
<p style="text-align: right;">Page 30</p> <p>1 here. One is when Dr. Rigot clicked "discharge" and said 2 he's discharged from Room 24. And then there's further 3 sort of, quote/unquote, discharge when he's removed from 4 the hospital premises, unable to stand.</p> <p>5 Q. Okay. Let's take the first one. Who is your 6 understanding -- who, to your understanding, based upon 7 your review, was responsible for the decision to 8 discharge Mr. Dunigan from the area of the emergency 9 department where care and examination is provided?</p> <p>10 A. Dr. Rigot.</p> <p>11 Q. Okay. Do you -- up to that point and that 12 decision, do you believe that anyone other than Dr. Rigot 13 violated the standard of care?</p> <p>14 A. No. Again, I don't -- I don't speak to nursing 15 standard of care. So no.</p> <p>16 Q. Or the EMTs or the nursing assistants or the 17 radiologist or anyone else involved in Mr. Dunigan's care 18 up to the point that Dr. Rigot made the decision to 19 discharge him from the emergency department where 20 examination and treatment is provided?</p> <p>21 A. Right.</p> <p>22 MR. HARRINGTON: I'm going to object -- hang on. 23 I'm going to object to form. Are you only speaking to a 24 standard of care or are you speaking to EMTALA?</p> <p>25 MR. O'LOUGHLIN: So far I'm on EMTALA -- no, I'm</p>	<p style="text-align: right;">Page 32</p> <p>1 of the standard of care by Dr. Rigot after the time he 2 decided to discharge the patient?</p> <p>3 A. After the time he discharged the patient, no. 4 You know, I feel like a fair answer to that question 5 should include the fact that the patient had -- there was 6 a violation of the standard of care leading to the 7 discharge from the ED. In other words, the cause of 8 Mr. Dunigan's fall was not addressed, and his weakness 9 and instability was not adequately addressed during his 10 stay.</p> <p>11 But if you're asking, well, forget all that, 12 after the discharge, was he then -- was there a violation 13 of the standard of care of anything he did after he sort 14 of inappropriately discharged the patient? No.</p> <p>15 Q. Well, would a fair answer to that question be 16 yes, I agree that I did not find any evidence that 17 Dr. Rigot violated the standard of care after the patient 18 was discharged to the waiting room?</p> <p>19 MR. HARRINGTON: I'm going to object to the form 20 of the question. He's already answered the question.</p> <p>21 THE WITNESS: Yes. As I said, I -- I stand by 22 what I said in my last answer.</p> <p>23 BY MR. O'LOUGHLIN:</p> <p>24 Q. Did Dr. Rigot commit any act or make any 25 decision after Mr. Dunigan was discharged to the waiting</p>

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<p style="text-align: right;">Page 33</p> <p>1 room which you believe was negligent?</p> <p>2 A. I feel like you're asking the same question. I</p> <p>3 don't believe that Dr. Rigot was -- as we talked about, I</p> <p>4 don't think Dr. Rigot was aware of the ongoing in the</p> <p>5 lobby and so on. I have no reason to believe that.</p> <p>6 Q. And therefore, no reason to believe that he</p> <p>7 violated any standard of care after Mr. Dunigan was</p> <p>8 discharged to the waiting room?</p> <p>9 MR. HARRINGTON: Objection to form. Foundation.</p> <p>10 THE WITNESS: I feel like I've answered the same</p> <p>11 question three times.</p> <p>12 BY MR. O'LOUGHLIN:</p> <p>13 Q. I don't think you've answered it yet, but I can</p> <p>14 explain it more, if you need it.</p> <p>15 MR. HARRINGTON: He has answered it.</p> <p>16 MR. O'LOUGHLIN: He has not.</p> <p>17 MR. HARRINGTON: Yes, he has.</p> <p>18 THE WITNESS: Why don't you -- let's -- why</p> <p>19 don't you posit the question one more time, please.</p> <p>20 BY MR. O'LOUGHLIN:</p> <p>21 Q. Can a physician, an emergency medical board</p> <p>22 certified physician, violate the standard of care without</p> <p>23 taking some action, making some decision? I'll leave it</p> <p>24 at that.</p> <p>25 A. Well, that -- that is very broad and vague.</p>	<p style="text-align: right;">Page 35</p> <p>1 BY MR. O'LOUGHLIN:</p> <p>2 Q. Was that a "no"?</p> <p>3 A. Correct.</p> <p>4 Q. Thank you.</p> <p>5 MR. HARRINGTON: And Ms. Court Reporter, you got</p> <p>6 my objection; right?</p> <p>7 THE REPORTER: Yes, I did.</p> <p>8 MR. HARRINGTON: Thank you.</p> <p>9 BY MR. O'LOUGHLIN:</p> <p>10 Q. Was there something you didn't understand about</p> <p>11 the distinction I was trying to make there, Doctor?</p> <p>12 A. No. I just wanted to be clear --</p> <p>13 MR. HARRINGTON: Don't argue with him.</p> <p>14 MR. O'LOUGHLIN: I'm not arguing.</p> <p>15 THE WITNESS: Can I go?</p> <p>16 MR. O'LOUGHLIN: Yes.</p> <p>17 THE WITNESS: I wanted to be clear that the</p> <p>18 responsibility to the patient does not end when the</p> <p>19 patient is discharged from the Room 24 or from the</p> <p>20 evaluation room.</p> <p>21 BY MR. O'LOUGHLIN:</p> <p>22 Q. And so it's your claim that Dr. Rigot had some</p> <p>23 responsibility to the patient after the patient went to</p> <p>24 the waiting room?</p> <p>25 A. I don't know the circumstance of that hospital.</p>
<p style="text-align: right;">Page 34</p> <p>1 MR. HARRINGTON: Yeah. I'm going to object to</p> <p>2 form. Foundation.</p> <p>3 BY MR. O'LOUGHLIN:</p> <p>4 Q. Well, this doesn't seem like that difficult a --</p> <p>5 let me try it one more time.</p> <p>6 A. Okay. I'm not trying to --</p> <p>7 Q. Did Dr. Rigot do or fail to do anything that</p> <p>8 another reasonable emergency medicine physician would or</p> <p>9 wouldn't do under the same or similar circumstances,</p> <p>10 after the point where Mr. Dunigan was discharged to the</p> <p>11 emergency -- to the waiting room?</p> <p>12 A. No. Although it's important to understand that</p> <p>13 discharge -- the term "discharge" has a different meaning</p> <p>14 than simply clicking on "discharge" and having the</p> <p>15 patient taken by wheelchair to the lobby. That's not the</p> <p>16 end of the engagement of the patient with the hospital.</p> <p>17 Q. Was that the end of the engagement of the</p> <p>18 patient with Dr. Rigot?</p> <p>19 A. It appears that way, yes.</p> <p>20 Q. All right. So do you think Dr. Rigot acted or</p> <p>21 failed to act in any way that you deemed negligent after</p> <p>22 the time Mr. Dunigan went to the waiting room?</p> <p>23 A. No.</p> <p>24 MR. HARRINGTON: Objection to form. Foundation.</p> <p>25 ///</p>	<p style="text-align: right;">Page 36</p> <p>1 I think when it became apparent that Mr. Dunigan was</p> <p>2 unable to stand and was incoherent and couldn't engage</p> <p>3 and couldn't support his own weight, at that point, is it</p> <p>4 the responsibility of the hospital, the nurses, the</p> <p>5 security guards, to bring that to the attention of an</p> <p>6 attending or of a -- of a physician? Yes.</p> <p>7 But is Dr. Rigot directly responsible for it?</p> <p>8 I -- that get -- becomes a little bit more vague to me.</p> <p>9 And I would add that it's not uncommon for a</p> <p>10 hospital at -- even at, you know, 5:00, 6:00 in the</p> <p>11 morning, to have multiple physicians available. I don't</p> <p>12 know the schedule. I don't know what Dr. Rigot -- if</p> <p>13 there were other physicians. But ultimately, you know,</p> <p>14 obviously a reevaluation was warranted and, you know, I</p> <p>15 don't -- I don't really think of Dr. Rigot as violating a</p> <p>16 standard of care for not being front and center in the</p> <p>17 lobby, evaluating the patient, despite these other, you</p> <p>18 know, multiple opportunities for reevaluation.</p> <p>19 Q. Is it your opinion that Dr. Rigot had some</p> <p>20 responsibility to the patient after the patient was taken</p> <p>21 to the waiting room?</p> <p>22 A. In a roundabout way, yes, in that Dr. Rigot</p> <p>23 represents the hospital. The hospital was still managing</p> <p>24 the patient's affairs and care. And in fact, you know,</p> <p>25 for sort of forcibly removing him. So in a roundabout</p>

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<p style="text-align: right;">Page 37</p> <p>1 way, yes.</p> <p>2 But I think in terms of a physician</p> <p>3 responsibility, standard of care question, no. As I</p> <p>4 answered.</p> <p>5 Q. Am I correct that you previously testified today</p> <p>6 that you are only offering opinions as to the standard of</p> <p>7 care required of Dr. Rigot and not of any other employee</p> <p>8 of the hospital?</p> <p>9 MR. HARRINGTON: Object. I'm sorry. I need to</p> <p>10 get a clarification. Are you asking standard of care</p> <p>11 under the typical medical malpractice standard of care,</p> <p>12 or are you asking it under the EMTALA context?</p> <p>13 BY MR. O'LOUGHLIN:</p> <p>14 Q. Is there a difference, Doctor?</p> <p>15 A. Yes, there's a difference.</p> <p>16 Q. All right. Then let's go with the question I</p> <p>17 asked. Did I understand your earlier testimony to be</p> <p>18 that you do not intend to offer opinions that the</p> <p>19 standard of care was violated by anyone other than</p> <p>20 Dr. Rigot?</p> <p>21 A. I'm not a standard of care expert for nurses,</p> <p>22 EMTs, security guards and police and so on. I think my</p> <p>23 expert opinion is that Mr. Dunigan's care by the hospital</p> <p>24 and inappropriate discharge, in an unstable state, speaks</p> <p>25 to a violation of the EMTALA mandate.</p>	<p style="text-align: right;">Page 39</p> <p>1 answers the question.</p> <p>2 A. EMTALA certainly falls under the auspices of an</p> <p>3 emergency physician, however.</p> <p>4 Q. Based upon your review and everything you know</p> <p>5 about this case, are you aware of any evidence indicating</p> <p>6 that any healthcare professional observed Mr. Dunigan's</p> <p>7 behavior in the waiting room?</p> <p>8 A. Do you want -- can you repeat the question? I'm</p> <p>9 sorry.</p> <p>10 Q. Based upon your review of this case and</p> <p>11 everything you know about it, are you aware of any</p> <p>12 evidence that any healthcare professional observed</p> <p>13 Mr. Dunigan's behavior in the waiting room after he was</p> <p>14 discharged by Dr. Rigot?</p> <p>15 A. Well, you know, I've looked at the surveillance</p> <p>16 video and it does look like there are observations made</p> <p>17 of him in the lobby from nurses passing through and from</p> <p>18 nurses in the nursing station. I think in -- the next</p> <p>19 natural question from that is: Were the security guards</p> <p>20 of the hospital acting as hospital agents? And they</p> <p>21 certainly had interaction with the patient as they were</p> <p>22 trying to stand him. You can see in the video. So I</p> <p>23 believe in that sense, yes.</p> <p>24 Q. You then considered the hospital security</p> <p>25 officers to be healthcare professionals?</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. Do you recall my question?</p> <p>2 MR. HARRINGTON: Yeah, he answered it.</p> <p>3 Objection.</p> <p>4 THE WITNESS: Yeah. Did I not answer the</p> <p>5 question?</p> <p>6 BY MR. O'LOUGHLIN:</p> <p>7 Q. Do you have an opinion that any healthcare</p> <p>8 professional or any other person involved in</p> <p>9 Mr. Dunigan's care, aside from Dr. Rigot, violated the</p> <p>10 standard of care?</p> <p>11 A. Yes. If you're --</p> <p>12 MR. HARRINGTON: Under EMTALA -- hang on. Under</p> <p>13 EMTALA or under the medical malpractice understanding of</p> <p>14 the term of art standard of care?</p> <p>15 BY MR. O'LOUGHLIN:</p> <p>16 Q. Under the medical malpractice standard of care.</p> <p>17 A. Under the medical malpractice standard of care,</p> <p>18 no.</p> <p>19 Under the EMTALA care --</p> <p>20 Q. Thank you.</p> <p>21 A. -- yes.</p> <p>22 Q. And are you an expert in any other profession</p> <p>23 other than emergency medicine?</p> <p>24 A. No.</p> <p>25 Q. Are you an expert in -- well, I think that</p>	<p style="text-align: right;">Page 40</p> <p>1 A. In the broadest sense, I think they are</p> <p>2 representatives of the hospital and have, you know, some</p> <p>3 reasonable expectation of involvement of making a</p> <p>4 decision, hey, this guy is limp. He cannot engage. He</p> <p>5 cannot -- you know, they should have known that he needed</p> <p>6 an additional medical evaluation.</p> <p>7 MR. HARRINGTON: Belated objection to form and</p> <p>8 foundation.</p> <p>9 BY MR. O'LOUGHLIN:</p> <p>10 Q. Okay. What's your definition of "healthcare</p> <p>11 professionals," Doctor?</p> <p>12 MR. HARRINGTON: Objection to foundation and</p> <p>13 form.</p> <p>14 Are you talking in his terms or what, you know,</p> <p>15 Michigan law has interpreted a licensed healthcare</p> <p>16 professional to be?</p> <p>17 MR. O'LOUGHLIN: I don't -- I'm not asking</p> <p>18 him -- I assume he's not an expert in Michigan law. He's</p> <p>19 the one who said in the broad sense, a security guard</p> <p>20 might be considered a healthcare professional. So I'm</p> <p>21 asking him his definition.</p> <p>22 MR. HARRINGTON: That's not really what he said</p> <p>23 or really even close to what he said. But I just need to</p> <p>24 make sure that, you know, because Michigan law talks</p> <p>25 about what a licensed healthcare professional is. So I</p>

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<p style="text-align: right;">Page 41</p> <p>1 need you to zero in your question a little bit. It's a 2 little too broad.</p> <p>3 MR. O'LOUGHLIN: How can I get more zeroed in 4 than asking this witness his understanding of that term?</p> <p>5 MR. HARRINGTON: But under what context? Under 6 the context as he knows it and as he operates in his 7 practice or under Michigan law? There's a -- Jack, you 8 know there's a difference.</p> <p>9 MR. O'LOUGHLIN: And I'm asking this witness's 10 understanding.</p> <p>11 THE WITNESS: Right. And I told you I think 12 that the security guards were acting as agents of the 13 hospital. I don't -- that doesn't make them a licensed 14 healthcare provider.</p> <p>15 BY MR. O'LOUGHLIN:</p> <p>16 Q. So with that understanding, are you aware of any 17 licensed healthcare provider who observed Mr. Dunigan's 18 behavior in the waiting room or outside the hospital or 19 in the police car?</p> <p>20 A. As I said earlier, you can see that there are 21 observations made of Mr. Dunigan while he's in the 22 waiting room. There are nurses that look at him, and I 23 believe there were comments made about how he was up, 24 walking around, quote/unquote. And somebody must have 25 made that observation to relay to security and police.</p>	<p style="text-align: right;">Page 43</p> <p>1 A. I don't -- I can't answer. I don't know.</p> <p>2 Q. All right. So back to my question. Are you 3 aware of any evidence indicating that any licensed 4 healthcare professional observed Mr. Dunigan's behavior 5 in the waiting room, outside the hospital or in the 6 police car?</p> <p>7 A. There's no testimony to that.</p> <p>8 Q. I didn't limit my question to testimony.</p> <p>9 A. I -- I don't know that -- I'm not sure.</p> <p>10 Q. Are you -- you're not sure if you're aware of 11 any evidence? Or you don't know of any evidence?</p> <p>12 A. I don't know of any evidence other than this 13 statement, which I don't recall who said it and in whose 14 deposition. I don't recall where that was from, so I -- 15 you know, other than that statement, no.</p> <p>16 Q. If you assume that that statement was made by 17 Chuck Shoemaker to a police officer, that Mr. Dunigan was 18 up walking around the waiting room, do you have any 19 reason to believe that that does not translate to a 20 licensed healthcare professional making that observation?</p> <p>21 A. No. Not necessarily. It could have been 22 something that Mr. Shoemaker came up with. It could have 23 been something he heard from a nurse, I don't know. I 24 don't recall any drilling of that in his deposition and I 25 don't know.</p>
<p style="text-align: right;">Page 42</p> <p>1 So yes, there is some evidence -- so yes, there is some 2 evidence of that.</p> <p>3 Q. Okay. Have you reviewed any testimony 4 indicating that any -- we'll use the term licensed 5 healthcare professional, observed Mr. Dunigan's behavior 6 in the waiting room or outside the hospital or in the 7 police car?</p> <p>8 A. No. Other than that one statement of he was up 9 walking around, quote/unquote. And I --</p> <p>10 Q. And who was that -- sorry, go ahead.</p> <p>11 A. I don't recall.</p> <p>12 Q. Was -- well, what have you -- what have you 13 reviewed? Have you reviewed the testimony of anyone 14 other than the two security guards and Dr. Rigot?</p> <p>15 A. I don't believe it was part of the testimony. I 16 think it's part of the audio or -- maybe it may have been 17 one of the -- the security guard's deposition, I don't 18 recall specifically. But I believe it was stated from a 19 security guard, maybe to the police, or that the patient 20 had been, quote, up walking around. So that would 21 certainly constitute an observation during the -- his 22 time in the lobby.</p> <p>23 Q. If that's true, what, if anything, allows you to 24 assume that that observation was made by a licensed 25 healthcare professional?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. All right. Or it could have been something he 2 observed?</p> <p>3 MR. HARRINGTON: Foundation. Form.</p> <p>4 THE WITNESS: I suppose so.</p> <p>5 BY MR. O'LOUGHLIN:</p> <p>6 Q. Do you have any reason to believe that 7 Mr. Shoemaker didn't observe Mr. Dunigan walking around 8 the waiting room?</p> <p>9 A. No.</p> <p>10 Q. What are your opinions as to violations of the 11 standard of care by Dr. Rigot?</p> <p>12 A. Well, there -- when somebody falls, there are 13 consequences of the fall. Dr. Rigot addressed that 14 appropriately. I think, you know, Mr. Dunigan was 15 injured. That's a consequence of the fall. He was 16 diagnosed with a chest contusion. He had x-rays that 17 didn't reveal evidence of thoracic injuries.</p> <p>18 But there are also causes of falls, and that is 19 where the standard of care is violated, I believe, with 20 Dr. Rigot. That the patient had something causing him to 21 fall that's contemporaneously documented by the nurse as, 22 "He didn't feel right. He was dizzy." And so I think, 23 you know, it would be a violation of the standard of care 24 not to address both the cause of the fall and the 25 consequence of the fall.</p>

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<p style="text-align: right;">Page 45</p> <p>1 Q. Any other opinions as to violations of the</p> <p>2 standard of care by Dr. Rigot?</p> <p>3 A. No. Other than that outlined in my report, no.</p> <p>4 Q. I'm not limiting the question to things that</p> <p>5 aren't outlined in your report. I need -- I'm asking you</p> <p>6 what your opinions are.</p> <p>7 A. Okay. Well --</p> <p>8 MR. HARRINGTON: Wait. Just so I'm clear, when</p> <p>9 you're asking this, Counsel, you're asking from a</p> <p>10 standard of care medical malpractice standpoint, as to</p> <p>11 what Dr. Rigot's violations were; right?</p> <p>12 MR. O'LOUGHLIN: Yeah. I'll do that for now.</p> <p>13 MR. HARRINGTON: And so if there is a subsequent</p> <p>14 malpractice case filed, do you need his deposition again?</p> <p>15 MR. O'LOUGHLIN: Oh, sure.</p> <p>16 MR. HARRINGTON: Well, then why are you asking</p> <p>17 this? Because I don't know if this is likely to lead to</p> <p>18 the discovery of admissible evidence.</p> <p>19 But you know what, go ahead, Doctor, have at it.</p> <p>20 Have at it.</p> <p>21 MR. O'LOUGHLIN: Let me ask a foundation</p> <p>22 question.</p> <p>23 BY MR. O'LOUGHLIN:</p> <p>24 Q. Doctor, can an emergency medicine physician</p> <p>25 violate EMTALA without violating the standard of care?</p>	<p style="text-align: right;">Page 47</p> <p>1 A. Yes.</p> <p>2 Q. And under the circumstance you described, would</p> <p>3 it be appropriate professional medical judgment for an</p> <p>4 emergency physician to reject such a transfer?</p> <p>5 A. Would it be a vi- -- would it be a poor judgment</p> <p>6 you're asking?</p> <p>7 Q. Would it be a violation of the standard of care?</p> <p>8 A. Well, again, I don't think standard of care</p> <p>9 applies in that situation, where there's an attempted --</p> <p>10 Q. Do you --</p> <p>11 A. Where there's an attempted and blocked transfer,</p> <p>12 it's not really a standard of care issue. It's an EMTALA</p> <p>13 question on the table.</p> <p>14 Q. So a physician can reject a requested transfer</p> <p>15 and care of a patient based on insurance reasons without</p> <p>16 being -- without violating the standard of care?</p> <p>17 A. Well, yeah. I feel like we're splitting hairs</p> <p>18 here. Well, not -- I feel like you're -- you're trying</p> <p>19 to suppose that there is a physician/patient relationship</p> <p>20 in this theoretical circumstance. Where there really is</p> <p>21 not physician/patient relationship. So there cannot be a</p> <p>22 standard of care violation. I don't have a relationship</p> <p>23 with that patient. I don't have a duty to that patient.</p> <p>24 But if it's deemed either by, you know, somebody in my</p> <p>25 hospital, like -- we don't want to take care of that guy</p>
<p style="text-align: right;">Page 46</p> <p>1 A. Yes. You can certainly commit an EMTALA</p> <p>2 violation. I'm trying to think of a circumstance where</p> <p>3 you would violate an -- where you would create an EMTALA</p> <p>4 violation without necessarily a standard of care.</p> <p>5 Standard of care requires that there's a -- a</p> <p>6 relationship between the patient and the physician. That</p> <p>7 there's an expectation and that relationship does not</p> <p>8 exist, are a lot of EMTALA violations that can take</p> <p>9 place.</p> <p>10 So, for instance, if a patient is -- if I'm</p> <p>11 working a shift and I get a phone call from an outside</p> <p>12 hospital that cannot manage a patient and there's a</p> <p>13 standard -- there's no relationship between me and that</p> <p>14 patient, but the patient was declined for transfer for</p> <p>15 whatever reason that was later deemed to be an EMTALA</p> <p>16 violation, then that would be a circumstance where it</p> <p>17 would be an EMTALA violation, but no standard of care</p> <p>18 violation. Does that make sense?</p> <p>19 In other words, if the transfer was declined for</p> <p>20 insurance purposes, say, that would be an EMTALA</p> <p>21 violation, but not necessarily standard of care</p> <p>22 violation.</p> <p>23 Q. Does a decision by an emergency medicine</p> <p>24 physician to accept or reject a requested patient</p> <p>25 transfer involve professional medical judgment?</p>	<p style="text-align: right;">Page 48</p> <p>1 because he's uninsured, that's an EMTALA violation. Not</p> <p>2 necessarily a standard of care violation. I feel like</p> <p>3 I'm saying the same thing.</p> <p>4 Q. You may be.</p> <p>5 Did -- when did Mr. Dunigan's physician/patient</p> <p>6 relationship with Dr. Rigot end?</p> <p>7 A. With Dr. Rigot specifically?</p> <p>8 Q. Yes.</p> <p>9 A. That's a good question. I feel like we really</p> <p>10 drilled on that earlier when we talked about, well, he</p> <p>11 was discharged to the lobby and, you know, I think we</p> <p>12 talked about that. That he -- he still was -- you know,</p> <p>13 just because the discharge icon was clicked doesn't make</p> <p>14 the patient gone from the hospital. Was Dr. Rigot's</p> <p>15 specific standard of care involvement with the patient</p> <p>16 then shut enough that he was no longer sponsoring the</p> <p>17 patient from a standard of care point of view in the</p> <p>18 lobby? Yes. We've talked about this.</p> <p>19 Was the hospital and its surrogates still</p> <p>20 responsible for Mr. Dunigan as he was in the lobby? Yes,</p> <p>21 I believe so.</p> <p>22 Q. When did Dr. Rigot's physician/patient</p> <p>23 relationship with Mr. Dunigan end?</p> <p>24 A. Again, I feel like I've asked it -- answered</p> <p>25 this question several times. Mr. Dunigan was discharged</p>

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<p style="text-align: right;">Page 49</p> <p>1 to the lobby by the order of Dr. Rigot, and so in a -- in 2 a sort of conventional, but not legal sense, the patient 3 was discharged at that point. 4 Q. All right. Thank you. 5 Did Dr. Rigot have any further contact with 6 Mr. Dunigan after Mr. Dunigan went to the waiting room? 7 A. Not to my knowledge. 8 Q. All right. I'm going to go back to where I 9 thought I was, which is your opinions as to violations of 10 the standard of care by Dr. Rigot. And if I understood 11 your testimony, that the consequences of Mr. Dunigan's 12 fall were appropriately addressed, but Dr. Rigot failed 13 to determine the cause of that fall? 14 A. Correct. 15 Q. What's your understanding of the cause of the 16 fall? 17 A. Well, Mr. Dunigan stated that he, quote, just 18 didn't feel right. And that he, quote, lost his balance. 19 And that he was, quote, dizzy. So I don't know, other 20 than what like I said, was contemporaneously documented 21 by the nurse, that the patient was with complaints of 22 being unsteady and dizzy and weak. 23 I think your question was why did Mr. Dunigan 24 fall; right? 25 Q. What's your understanding of why he fell?</p>	<p style="text-align: right;">Page 51</p> <p>1 explain why the nurses say he was dizzy and felt off 2 balance. 3 Q. And did you understand that was historical 4 information or that he was dizzy or off balance while he 5 was in the emergency department? 6 A. Well, the nurse, contemporaneous with the 7 patient's care, documented that he, quote, just didn't 8 feel right and that he was dizzy. So you're asking a 9 histor- -- can you repeat your question, I'm sorry? 10 Q. Was it your understanding that the nurse's note 11 that you referenced regarding dizziness was a current 12 complaint while he was in the emergency department or a 13 historical complaint? 14 A. Well, that's a good question. It's not 15 actually clear. I mean, it's definitely historical, 16 because it says, "I just didn't feel right," 17 quote/unquote. But it also says his neuro symptoms are 18 dizziness. So I guess the answer is both. 19 Q. That's your understanding based upon your review 20 of this record? 21 A. Yeah. 22 Q. All right. Good. 23 Doesn't what the patient states is, "I lost my 24 balance getting off the bus"? 25 A. Where do you see that? On the nursing notes?</p>
<p style="text-align: right;">Page 50</p> <p>1 A. I -- I -- 2 Q. Can you answer that? 3 A. I can't say. I don't know. The -- 4 unfortunately, he was discharged to the lobby and that 5 was not determined. I think there was a reasonable 6 expectation to use the resources available to determine 7 the cause of the fall, including diagnostics and labs and 8 consultants, if need be. 9 Q. Wasn't the history Mr. Dunigan gave that he 10 accidentally fell getting off a bus? 11 A. The history was that he fell getting off a bus. 12 Q. When did that fall occur? Eight hours -- 13 A. Yeah. 14 Q. Sorry. Go ahead. 15 A. I think the answer was it was several hours 16 prior to 9-1-1 being activated. 17 Q. And didn't Dr. Rigot put in his history of 18 present illness that Mr. Dunigan stated that the pain 19 began after he accidentally fell getting off a bus, onto 20 cement? 21 A. Let me open the record. 22 Yes, it does state that. 23 Q. And didn't Dr. Rigot testify that what he 24 understood Mr. Dunigan had was a mechanical fall? 25 A. He did testify to that. That doesn't help</p>	<p style="text-align: right;">Page 52</p> <p>1 Yes. 2 Q. Right above -- 3 A. Yeah. Yeah. "I lost my balance. I just didn't 4 feel right." You know, I think had the physician been 5 aware of this issue or had the physician known about 6 this, this is a cry for check my potassium. Because as 7 Dr. Rigot's note points out, the patient is noncompliant 8 with dialysis. And when somebody that's noncompliant 9 with dialysis is dizzy and didn't feel right, that's -- 10 that's a cry for help for checking potassium and further 11 investigation. 12 Again, this gets at the cause of the fall, you 13 know, not the consequence, which was the unfortunate 14 focus of the care. 15 Q. Okay. And just to clarify that. As far as what 16 Mr. Dunigan did present with, the chest or flank pain due 17 to the fall, that was adequately addressed by Dr. Rigot? 18 A. The consequence of the fall and the injury to 19 the thorax, yes. I think that was adequately addressed, 20 that part of it. 21 Q. Okay. And at the time Mr. Dunigan was in the 22 emergency department, other than that note of dizziness 23 that you find unclear, did you find any indication that 24 he was continuing to complain of any problem other than 25 the pain?</p>

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<p style="text-align: right;">Page 53</p> <p>1 A. Well, not really, although "continuing to</p> <p>2 complain" is a little bit loaded. Because he was</p> <p>3 essentially evaluated, had an x-ray and was discharged.</p> <p>4 So it doesn't -- you know, he only had one set of vitals.</p> <p>5 And I mean, he had another later recheck, but, you know,</p> <p>6 it's a fairly short ED visit. So I don't know that there</p> <p>7 was ample opportunity to complain of things.</p> <p>8 Although, you know, reviewing the video from the</p> <p>9 lobby, it appears the patient had continued issues with</p> <p>10 being off balance, dizzy and weak and so on.</p> <p>11 Q. Okay. Did you follow my question?</p> <p>12 A. Yes. Did I not answer it?</p> <p>13 Q. Did you see any evidence, aside from that one</p> <p>14 nurse's note that you deemed unclear, as to whether it</p> <p>15 was contemporaneous for history and note of dizziness?</p> <p>16 Did you see any evidence that Mr. Dunigan presented any</p> <p>17 other symptoms in the emergency department which would</p> <p>18 indicate an emergency medical condition?</p> <p>19 MR. HARRINGTON: Objection. Form. Foundation.</p> <p>20 THE WITNESS: I think your question was did</p> <p>21 he -- did he fall because he was dizzy or is there other</p> <p>22 evidence besides that nursing note? And then your</p> <p>23 question became was there any other emergency medical</p> <p>24 condition that was evident? Is that -- am I</p> <p>25 oversimplifying things?</p>	<p style="text-align: right;">Page 55</p> <p>1 acknowledgment by the nurse that there was dizziness and</p> <p>2 there is dizziness.</p> <p>3 But to answer your question, I don't think</p> <p>4 there's much other specific evidence of him, you know,</p> <p>5 sort of having this issue of dizziness. I'll note that</p> <p>6 the medic records do indicate they specifically asked,</p> <p>7 "Why did you fall?" And he said he was unable to provide</p> <p>8 an answer why he fell. But I don't think that helps or</p> <p>9 hurts this either way.</p> <p>10 Q. Other than the complaint of chest pain for which</p> <p>11 he presented and which was adequately addressed, and the</p> <p>12 note of dizziness that the nurse made in the record, are</p> <p>13 you aware of any evidence of any ongoing symptoms or</p> <p>14 problems indicating that Mr. Dunigan had an emergency</p> <p>15 medical condition in the emergency department?</p> <p>16 A. Before getting sent to the lobby?</p> <p>17 Q. Correct.</p> <p>18 A. No.</p> <p>19 Q. The EMS run that you reviewed showed that his</p> <p>20 breathing was normal, unlabored and clear; true?</p> <p>21 A. I'll have to go back and look. They may have</p> <p>22 documented that.</p> <p>23 Unlabored, clear, yep. That's what it says.</p> <p>24 Q. The Glasgow Coma Scale, what does that mean?</p> <p>25 A. That's a measure of consciousness. A</p>
<p style="text-align: right;">Page 54</p> <p>1 Maybe if you restate your question is better,</p> <p>2 I'm sorry.</p> <p>3 BY MR. O'LOUGHLIN:</p> <p>4 Q. Was there any evidence of ongoing problems or</p> <p>5 symptoms in the emergency department, other than the</p> <p>6 chest pain Mr. Dunigan complained of due to the fall and</p> <p>7 that single note of dizziness, which to you was unclear</p> <p>8 as to whether it was historical or ongoing?</p> <p>9 A. Well, yes. Like we talked about, the video is</p> <p>10 certainly evidence of instability.</p> <p>11 Q. I'm sorry if I wasn't clear, but what I'm</p> <p>12 attempting to do when I say "in the emergency</p> <p>13 department," is during the time he was being cared for by</p> <p>14 Dr. Rigot and the nurses in the emergency department, as</p> <p>15 opposed to the waiting room. Is that fair?</p> <p>16 A. Okay.</p> <p>17 Q. And are you aware of any evidence of any ongoing</p> <p>18 problems or symptoms, other than the chest pain that he</p> <p>19 came in for and was adequately addressed, and the note of</p> <p>20 dizziness, which you were unclear as to whether that was</p> <p>21 historical or contemporaneous?</p> <p>22 A. Well, it appears that it's both. It's -- I'm</p> <p>23 not unclear. It says, "The patient has dizziness," and</p> <p>24 it says, "I lost my balance. I just didn't feel right."</p> <p>25 So to be clear, going back, I think it's, you know, some</p>	<p style="text-align: right;">Page 56</p> <p>1 three-pronged scale giving points for motor engagement,</p> <p>2 verbal engagement and eye -- using eyes.</p> <p>3 Q. And what's the best score you can get?</p> <p>4 A. 15.</p> <p>5 Q. And what was Mr. Dunigan's score, per the EMS</p> <p>6 record?</p> <p>7 A. 15.</p> <p>8 Q. An EMS record noted his vital signs, were those</p> <p>9 within normal limits?</p> <p>10 A. Yes.</p> <p>11 Q. They checked his blood sugar and noted it to be</p> <p>12 172. Does that indicate a diabetic crisis?</p> <p>13 A. Unable to declare from that, but it was mildly</p> <p>14 elevated.</p> <p>15 Q. Earlier you testified that blood sugar of less</p> <p>16 than 60, 50 or 40 or higher than 180 might indicate a</p> <p>17 problem. But there would not be a crisis unless it was</p> <p>18 300 to 500?</p> <p>19 A. I didn't say that. I didn't say 180.</p> <p>20 Q. Did you say low hundreds?</p> <p>21 A. I don't recall what I said.</p> <p>22 Q. All right. What would be the level where you</p> <p>23 believe a blood sugar would indicate a diabetic problem</p> <p>24 that required treatment?</p> <p>25 A. Well, that was one of the first questions we</p>

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<p style="text-align: right;">Page 57</p> <p>1 went over. As I said, it can be low and that would be a 2 diabetic crisis that would require intervention. It 3 could be high and that can be a sign of, you know, sort 4 of a marker of acidosis. We talked about that earlier. 5 Q. What is high? 6 A. You can get acidosis with a not that high level. 7 You can get acidosis with a level of 150 to 200. You 8 can. It's unusual. More typically, you would see 9 acidosis with higher levels, 3-, 4-, 500 plus. 10 Q. And Mr. Dunigan's level was 152, per the EMS 11 record; true? 12 A. Right. 13 Q. The EMS record indicates that his mental status 14 was normal? 15 A. Yes. 16 Q. Their exam was negative for complaints of chest 17 pain, shortness of breath, headache, nausea, vomiting, 18 weakness, dizziness, numbness or tingling? 19 A. Well, no. I mean, he was there for -- his chief 20 complaint was chest pain. So where are you reading that 21 it says no chest pain? It's not uncommon -- I'll say 22 it's not uncommon for a -- a paramedic to quickly click 23 through screens that are forced fields, to permit them to 24 close the record. And they're often clicked through in 25 a -- an expeditious fashion to get through the chart. So</p>	<p style="text-align: right;">Page 59</p> <p>1 Breathing rate normal. Quality unlabored. Lung sounds, 2 left clear, right clear." And then -- 3 Q. Keep going. 4 A. And then down a section, yeah, it says, 5 "Additional Assessment Notes. The patient did not 6 complain of chest pain, shortness of breath, headache, 7 nausea," and so on. So -- 8 Q. "No vomiting, diarrhea, weakness, dizziness, or 9 numbness or tingling"; true? 10 A. Well, that's what they wrote. But clearly the 11 first part of what they wrote is inaccurate. 12 Q. Well, not if they determined that his real 13 complaint was not chest pain, but flank pain? 14 A. Well, I don't know. I mean, it says in here, 15 several times, there's chest pain. Look at the very top 16 of that page, what does the first sentence say on that 17 page? "Right-sided chest pain reported"; right? 18 Q. Which if we're clear, that's the symptom that 19 you believe was adequately addressed in the ER? 20 A. Well -- 21 MR. HARRINGTON: Objection to form. Foundation. 22 THE WITNESS: Yeah. No, I didn't say that. I 23 said that I think the consequence of his fall, the 24 thoracic injury, was adequately addressed. Was there 25 something else -- was there something else more sinister</p>
<p style="text-align: right;">Page 58</p> <p>1 it's not that uncommon to have the patient say, "I called 2 paramedics for chest pain," and they go through a little 3 review of symptoms and it says "no chest pain." It's not 4 that common, but I don't put too much weight on that. 5 Q. Where do you see that? What page are you on? 6 A. I don't know if your pages are numbered the same 7 as mine, but it's the bottom of the page, which is 8 actually my third page in the EMS record. It's under 9 "Physical Assessment" and below the itemized physical 10 assessment. 11 Q. Let me see. 12 A. Under "Additional Assessment Notes," there's a 13 headings of "Vitals, Treatments and Medications." Or is 14 it under -- and then there's "EKG, Narrative History 15 Text," is it that section? 16 Q. Do you have -- yes. It's below that, with 17 "Narrative History Text" being bolded, and it's at the 18 bottom of that page on my copy. 19 A. Okay. 20 Q. Under the "Physical Assessment." 21 A. Let me see. Oh, at the very bottom. Okay. So 22 "pupils, mental status, airway," okay. 23 And then it goes on to "chest, right-sided chest 24 pain reported, no obvious instability" -- it says, "No 25 obvious instability, crepitus or deformity noted.</p>	<p style="text-align: right;">Page 60</p> <p>1 causing him to fall that also produced chest pain? I 2 don't know the answer to that question. 3 BY MR. O'LOUGHLIN: 4 Q. Is there any indication that he had chest pain 5 other than the pain described from the fall? 6 A. That's not clear to me. 7 Q. And you didn't find anything in the record that 8 clarified that? 9 A. Correct. 10 MR. HARRINGTON: Counsel, whenever you're at a 11 point, I would like to take a quick break. 12 MR. O'LOUGHLIN: We can do that right now. 13 MR. HARRINGTON: Thank you very much. 14 (Recess) 15 BY MR. O'LOUGHLIN: 16 Q. Doctor, initially in this deposition, we went 17 over the signs and symptoms of hyperkalemia and 18 congestive heart failure. Do you recall those? 19 A. Yes. 20 Q. I'm not asking you to repeat them. From your 21 review of the records while Mr. Dunigan was in the 22 emergency department, and by that I mean in the area 23 where he was examined and treated by nurses and doctors, 24 did he exhibit any signs or symptoms of hyperkalemia? 25 A. It's hard to say. Again, hyperkalemia can be --</p>

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<p style="text-align: right;">Page 61</p> <p>1 can be cryptic. You can have very high levels and have 2 very few symptoms.</p> <p>3 And further, I would like to add that you asked 4 under -- while under the care of the nurses or physicians 5 and nurses, I -- you know, I sort of view the lobby as 6 under the purview of the nurses. So I don't -- I think 7 what you meant is the room, and just to be clear.</p> <p>8 Q. Well, just to be clear, let's talk about up to 9 the time he was wheeled into the waiting room. Is that 10 clear enough for you?</p> <p>11 A. Yeah, that's clearer, although I would -- I 12 stand by what I said, which is that, you know, signs and 13 symptom of hyperkalemia can be almost nonexistent. It 14 could be dizziness and feeling not right.</p> <p>15 Q. Okay. Let's try and parse that out. If the 16 symptoms are nonexistent, then there would be no signs or 17 symptoms of hyperkalemia; true?</p> <p>18 A. There would be no symptoms, yeah. If there were 19 no symptoms, there are no symptoms; right?</p> <p>20 There can be signs. Signs can be an abnormal 21 wave form on an EKG. It could be -- you know, arguably 22 you could have -- a symptom of hyperkalemia is feeling 23 weak and dizzy. So, you know, we don't know whether his 24 being weak and feeling not right is related to 25 hyperkalemia. We don't know that.</p>	<p style="text-align: right;">Page 63</p> <p>1 correct?</p> <p>2 A. Yeah. On this physical exam, correct. Physical 3 exam findings and complaints are not the same. I mean, 4 you can certainly be short of breath and have normal lung 5 sounds. So -- but I didn't --</p> <p>6 Q. Do you --</p> <p>7 A. But to be clear, I don't see evidence that he 8 was complaining of shortness of breath.</p> <p>9 Q. And you don't see evidence that he -- that his 10 lungs were anything other than clear?</p> <p>11 A. They're documented as clear here by the doctor.</p> <p>12 Q. Okay. Back to my question. Any signs or 13 symptoms of congestive heart failure while he was in the 14 emergency department, up to the time he went to the 15 waiting room?</p> <p>16 A. Well, again excluding this question about 17 dizziness, I mean, the -- or feeling weak and something's 18 not right, that could be a symptom of heart failure. It 19 could be a symptom of heart failure. But no.</p> <p>20 Q. Other than that --</p> <p>21 A. But other than that, no.</p> <p>22 Q. Were his vital signs normal in the emergency 23 department?</p> <p>24 A. No. Initially he was tachycardic. His heart 25 rate was 113.</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. Please listen to my question. While he was in 2 the emergency department, is there any evidence that he 3 exhibited any symptoms of hyperkalemia?</p> <p>4 A. Well, potentially, yes.</p> <p>5 Q. What are they?</p> <p>6 A. Weakness. Dizziness. Not feeling right.</p> <p>7 Q. And do you see -- other than that single note by 8 the nurse that says "dizziness," and then describes how 9 he felt at the time of the fall, is there anything other 10 than that that you would see that he exhibited in terms 11 of a symptom of hyperkalemia while in the emergency 12 department?</p> <p>13 A. No. Not really.</p> <p>14 Q. While he was in the emergency department, did he 15 exhibit any signs or symptoms of congestive heart 16 failure?</p> <p>17 A. Again, the same answer as the hyperkalemia, 18 really. Not specifically when he was back in the -- in 19 the room that I can see.</p> <p>20 Q. He had no shortness of breath; true?</p> <p>21 A. I don't recall if that was specifically asked. 22 I can look. I don't see that they specifically asked 23 about it.</p> <p>24 Q. Under "Respiratory" there's no respiratory 25 distress, normal breath sounds, no rales, no wheezing;</p>	<p style="text-align: right;">Page 64</p> <p>1 Let me look. His blood pressure was on the low 2 side, particularly for somebody with hypertension, 101 3 over 60, I think. Other than that, the vitals don't seem 4 particularly abnormal.</p> <p>5 Q. And the pulse/heart rate was rechecked and was 6 normal?</p> <p>7 A. Yes, it was normal on recheck, correct.</p> <p>8 Q. And it was normal in the field with EMS?</p> <p>9 A. Yes.</p> <p>10 Q. At 64?</p> <p>11 A. Yes.</p> <p>12 Q. And in your experience, have you seen what they 13 call white coat syndrome, patients who experience an 14 elevated heart rate as they present to a physician or to 15 an emergency department?</p> <p>16 A. Sure. That's pretty well-described. I think 17 this is somebody who is pretty familiar with the medical 18 field. But if we were to guess why his heart rate was 19 high, I have no -- I have no reasonable guess on that. I 20 don't know.</p> <p>21 Q. And is that initial heart rate of 113 that 22 dropped to 90 of any clinical significance to you?</p> <p>23 A. It's worrisome, mildly so. I think a high heart 24 rate would be, you know, one of our warning signs we get. 25 But as you pointed out, it was improved on reevaluation.</p>

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<p style="text-align: right;">Page 65</p> <p>1 Q. His respiratory rate was within normal limits?</p> <p>2 A. Yes.</p> <p>3 Q. He had good oxygen saturation?</p> <p>4 A. Yes. I'm trying to find --</p> <p>5 Q. On room air?</p> <p>6 A. I'm trying to find the page with this. I</p> <p>7 believe that's correct, yes.</p> <p>8 Q. His neurological was noted to be within normal</p> <p>9 limits?</p> <p>10 A. Yes. They say -- Dr. Rigot documents that he's</p> <p>11 oriented, with normal strength and no sensory deficits</p> <p>12 noted. So I like to walk patients. I think it's</p> <p>13 important for a gait to be observed. But that was not</p> <p>14 done here.</p> <p>15 Q. What was -- what's your knowledge of</p> <p>16 Mr. Dunigan's pre-presentation gait?</p> <p>17 A. It's difficult to say from this record. There</p> <p>18 is mention of hemiplegia, that he was partially paralyzed</p> <p>19 from a previous stroke. And then piecing together from</p> <p>20 outside other records, that he used a cane, which you can</p> <p>21 see the cane during his stay.</p> <p>22 Q. Any other knowledge of his pre-presentation</p> <p>23 gait?</p> <p>24 A. No.</p> <p>25 Q. What -- do you believe that Mr. Dunigan had an</p>	<p style="text-align: right;">Page 67</p> <p>1 his -- you know, his heart rate was transiently high.</p> <p>2 His -- you know, the symptoms that prompted him to come</p> <p>3 in and so on. But no, there's no other evidence of stuff</p> <p>4 until he was sent to the lobby.</p> <p>5 Q. And if that dizziness was in fact meant to be a</p> <p>6 historical notation, referring to when he fell, can</p> <p>7 you -- is there any indication that he continued to have</p> <p>8 an emergency medical condition while he was in the</p> <p>9 emergency department, meaning up to the time he went to</p> <p>10 the waiting room?</p> <p>11 A. Yeah. I know what you mean. No, I think the</p> <p>12 answer's no. Although they don't test it. They don't</p> <p>13 walk him. They don't stand him. So that, you know, even</p> <p>14 it's maybe historical that he's unable to stand and he</p> <p>15 was unusually -- something's not right, off-balance,</p> <p>16 that's not -- that's not challenged in the ED.</p> <p>17 Q. Is the answer to my question "no"?</p> <p>18 A. Correct.</p> <p>19 MR. HARRINGTON: Objection. Form. Foundation.</p> <p>20 THE WITNESS: Yeah.</p> <p>21 BY MR. O'LOUGHLIN:</p> <p>22 Q. Are you aware of any evidence indicating that</p> <p>23 Dr. Rigot, or any of the other licensed healthcare</p> <p>24 professionals in the emergency department, ever actually</p> <p>25 perceived that Mr. Dunigan had an emergency medical</p>
<p style="text-align: right;">Page 66</p> <p>1 emergency medical condition when he was in the emergency</p> <p>2 department prior to the time he went to the waiting room,</p> <p>3 other than his chest and flank pain from the fall?</p> <p>4 A. Yes.</p> <p>5 Q. And what do you believe that emergency medical</p> <p>6 condition was?</p> <p>7 A. Well, he was -- as I alluded to with getting at</p> <p>8 the cause of his fall, he was dizzy and weak and</p> <p>9 unsteady. So with that, I think the answer to your</p> <p>10 question is he was having those symptoms throughout his</p> <p>11 ED stay, and --</p> <p>12 Q. I'm sorry. Just so I'm clear, did you say</p> <p>13 having no symptoms or having those symptoms?</p> <p>14 A. "Those."</p> <p>15 Q. You said he was having those symptoms throughout</p> <p>16 his ER stay?</p> <p>17 A. Well, that's what's documented. The nurse</p> <p>18 points out that he was dizzy and unstable -- you know,</p> <p>19 his lack of stability is -- is seen in the immediate, you</p> <p>20 know, timeframe after his discharge to the lobby.</p> <p>21 Q. Anything other than the nurse's note, that</p> <p>22 states dizziness, indicating that he had an emergency</p> <p>23 medical condition up to the time that he went into the</p> <p>24 waiting room?</p> <p>25 A. No. Other than these things we've talked about,</p>	<p style="text-align: right;">Page 68</p> <p>1 condition beyond the chest and flank pain from the fall?</p> <p>2 A. I think you're asking -- can you repeat the</p> <p>3 question again? I apologize about that.</p> <p>4 Q. Sure.</p> <p>5 Are you aware of any evidence, based upon</p> <p>6 everything you've reviewed, indicating that Dr. Rigot or</p> <p>7 any of the nurses actually perceived that Mr. Dunigan had</p> <p>8 an emergency medical condition, other than the chest and</p> <p>9 flank pain attributed to the fall?</p> <p>10 A. Well, yeah. I mean, the nurse -- we're talking</p> <p>11 about the same thing again and again. The nurse points</p> <p>12 out that he was not right and dizzy. So I would say</p> <p>13 that's a perception of there being an emergency medical</p> <p>14 condition.</p> <p>15 Q. Anything other than that?</p> <p>16 A. No. I feel like I've answered this question</p> <p>17 several times. But no, I don't see other evidence.</p> <p>18 Q. And even if the nurse noted dizziness, do you</p> <p>19 have -- do you know of any evidence that indicates that</p> <p>20 the nurse perceived that as a serious medical condition,</p> <p>21 which if not treated would be life-threatening?</p> <p>22 A. I have no way of saying -- answering that.</p> <p>23 Q. You're not aware of any evidence indicating that</p> <p>24 any nurse or doctor actually perceived Mr. Dunigan to</p> <p>25 have a medical condition which, if left untreated, would</p>

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<p style="text-align: right;">Page 69</p> <p>1 threaten his life?</p> <p>2 MR. HARRINGTON: Objection. Form. Foundation.</p> <p>3 THE WITNESS: Yeah. Again, I don't see that</p> <p>4 there's that perception. Of course you can't see what</p> <p>5 you don't look for; right?</p> <p>6 BY MR. O'LOUGHLIN:</p> <p>7 Q. Let's try it with an answer to my question,</p> <p>8 Doctor.</p> <p>9 Are you aware of any evidence indicating that</p> <p>10 any nurse or physician actually perceived that</p> <p>11 Mr. Dunigan had a life-threatening medical condition or a</p> <p>12 serious medical condition while he was in the emergency</p> <p>13 department, before he went to the waiting room?</p> <p>14 A. Yes.</p> <p>15 MR. HARRINGTON: Objection. Form foundation.</p> <p>16 Go ahead.</p> <p>17 BY MR. O'LOUGHLIN:</p> <p>18 Q. And your answer?</p> <p>19 A. Yes.</p> <p>20 Q. And what evidence are you referring to?</p> <p>21 A. The nursing documentation that he didn't feel</p> <p>22 right and was dizzy.</p> <p>23 Q. Okay. The nursing documentation says</p> <p>24 "dizziness." Is it your understanding that the verbiage</p> <p>25 below the word "dizziness" is historical and not as of</p>	<p style="text-align: right;">Page 71</p> <p>1 picked up or it's a simple mechanical fall, no.</p> <p>2 Q. Would a mechanical fall resulting in a contusion</p> <p>3 to the lower right ribs in and of itself require any</p> <p>4 laboratory studies?</p> <p>5 A. No.</p> <p>6 But, again, in this case, we don't have evidence</p> <p>7 that this was a mechanical fall and he has further</p> <p>8 complaints of dizziness, weakness, and no noncompliance</p> <p>9 with hemodialysis, so this is really quite separate from</p> <p>10 the circumstance you describe.</p> <p>11 Q. Did you believe there was a history of</p> <p>12 noncompliance with hemodialysis that was known to</p> <p>13 Dr. Rigot or the nurses?</p> <p>14 A. Yes.</p> <p>15 Q. What do you base that upon?</p> <p>16 A. Dr. Rigot's note saying there's a history of</p> <p>17 noncompliance with hemodialysis.</p> <p>18 Q. You'll have to point that out to me.</p> <p>19 A. Okay. I don't know how your pages are noted.</p> <p>20 The Bronson ED visit, it says, Page 9, right in the</p> <p>21 middle there, "End stage renal disease, Monday,</p> <p>22 Wednesday, Friday, Fresenius. Noncompliance."</p> <p>23 Q. I guess ours aren't the same.</p> <p>24 A. Well, there's two versions. There's two</p> <p>25 versions of the ED record. There's also Page 14. It</p>
<p style="text-align: right;">Page 70</p> <p>1 the time he was in the emergency department?</p> <p>2 A. It's -- I can read it. It says, "The patient</p> <p>3 states," quote, "lost my balance getting off the bus. I</p> <p>4 just didn't feel right," quote. And then above that, it</p> <p>5 says, "Dizziness." So I don't -- I'm not the nurse. I</p> <p>6 don't know what -- I wasn't there. I don't know if she</p> <p>7 was saying, "Are you having any dizziness? Were you</p> <p>8 having any dizziness?" She might have said, "Are you or</p> <p>9 were you having any dizziness," that could have triggered</p> <p>10 that input. I don't know.</p> <p>11 Q. Let's go back. Other than that, are you aware</p> <p>12 of any evidence indicating that any nurse or doctor</p> <p>13 actually perceived that Mr. Dunigan had an emergency</p> <p>14 medical condition, other than the chest pain attributable</p> <p>15 to the fall for which he presented?</p> <p>16 A. No.</p> <p>17 Q. Would a mechanical fall on one's lower right</p> <p>18 ribs resulting in an emergency department presentation</p> <p>19 require an EKG?</p> <p>20 A. Mechanical fall? No. It would be atypical to</p> <p>21 require an EKG. In the circumstance where there was</p> <p>22 perceived dysrhythmia, in other words, if the patient</p> <p>23 fell, was on cardiac monitor and there was abnormal EKG</p> <p>24 rhythm seen on the monitor, would that warrant a 12-lead</p> <p>25 EKG? Yes. But in the circumstance of where that's not</p>	<p style="text-align: right;">Page 72</p> <p>1 appears on 9 or 14, in the middle.</p> <p>2 Q. I'm sorry. I'm not finding it. Can you give me</p> <p>3 any other landmarks as to what it's near?</p> <p>4 A. Sure. Let's see. Let's go to -- just pull up</p> <p>5 the ED record. It says, "ED provider notes by Wesley</p> <p>6 Rigot at 2:26 a.m." Do you see that kind of heading,</p> <p>7 with an underline?</p> <p>8 Q. Yes.</p> <p>9 A. And that says Version 2 of 2 or Version 1 of 2</p> <p>10 next to it?</p> <p>11 Oh, I see. Here -- okay. So you must be on</p> <p>12 Version 2 of 2; right? It says, "ED provider note by</p> <p>13 Dr. Wesley Rigot." Do you see that?</p> <p>14 Q. Yes.</p> <p>15 A. And then it says -- below that, it says,</p> <p>16 "Emergency department encounter. First contact. Chief</p> <p>17 complaint"; right?</p> <p>18 Q. Yes.</p> <p>19 A. Okay. Turn the page. And then there's a dark</p> <p>20 heading "Diagnosis." In the middle of the page, it says,</p> <p>21 "Diagnosis," and a bar. It's basically describing his</p> <p>22 past medical history. Is all caps heading, "PAST MEDICAL</p> <p>23 HISTORY."</p> <p>24 Q. Okay. I have a heading which says, "PAST</p> <p>25 MEDICAL HISTORY."</p>

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<p style="text-align: right;">Page 73</p> <p>1 A. Okay. Then look halfway down, "End-stage renal 2 disease, Monday, Wednesday, Friday, Fresenius. 3 Noncompliance." Fresenius is a company that does 4 dialysis. 5 Q. Okay. And you understand that's past medical 6 history? 7 A. Well, yeah, it's part of the patient's medical 8 history. 9 Q. As far as the history of Mr. Dunigan's dialysis 10 that week, what did Dr. Rigot report? 11 A. He recorded that he had had dialysis at an 12 outside facility, at Borgess. That note is generated 12 13 hours after Mr. Dunigan's death, I would point out. 14 Although he does state that he got dialysis, quote, twice 15 this week. 16 Q. You would agree with me that what it says is, 17 "Patient admitted. Just discharged from Borgess 18 recently. Had dialysis twice this week while there. 19 Scheduled dialysis tomorrow," open paren, "(Friday)," 20 close paren. That's what it says; right? 21 A. Yes, that's what it says. 22 Q. Okay. And the Friday was actually the day he 23 was in the emergency department? 24 A. Yep. That's the day. The 6th of May, 2016, is 25 a Friday.</p>	<p style="text-align: right;">Page 75</p> <p>1 MR. HARRINGTON: You can't limit him to "yes" or 2 "no." If he needs to explain his answer beyond "yes" or 3 "no," he's allowed to do that. 4 BY MR. O'LOUGHLIN: 5 Q. The question had nothing to do with this case. 6 It was a hypothetical question on a patient presenting 7 with lower right rib pain from a mechanical fall. Does 8 that presenting, in and of itself, require any laboratory 9 studies? 10 A. Well, the short answer is it depends. I mean, 11 if somebody fell 12 feet and they have an obvious injury 12 of their thorax and abdomen, they would get screening 13 labs, CAT scanned and further workup, higher imaging so 14 to speak. 15 If you're asking about a -- so does that answer 16 your question? 17 Q. If you want that caveat in there, I'll just ask 18 you another one with that understanding. Does a patient 19 presenting with lower right rib pain due to a mechanical 20 fall, that presents with only tenderness and a contusion 21 at the site of the injury and no indication that the fall 22 was from a height, does that patient require laboratory 23 studies? 24 MR. HARRINGTON: Objection to form. Foundation. 25 Facts not in evidence. Improper hypothetical.</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. So the -- did Dr. Rigot have any history of 2 recent noncompliance with dialysis? 3 A. Oh, I have no idea. He doesn't document that he 4 does, except that it says "noncompliance," with the past 5 medical history. 6 Q. All right. And I actually forgotten why we got 7 off on this. I honestly can't remember where I was. I 8 think I was asking you if the -- a patient presenting 9 with pain in the lower right ribs due to a fall required 10 laboratory studies. 11 A. Right. And I answered with the caveat that that 12 circumstance of what you -- actually, your original 13 question was about a mechanical fall, and I was pointing 14 out that that circumstance of a mechanical fall is quite 15 discrepant from this case where, you know, the patient 16 was dizzy and not right. 17 Q. Does a patient who presents with lower right rib 18 pain due to a mechanical fall require any lab studies? 19 A. Generally, no. Although again I will point out 20 that the circumstance we're talking about is not that 21 clear. It's not clear that this was a simple mechanical 22 fall. In fact, it's quite clear it's not a mechanical 23 fall. 24 Q. Did you understand my question to be capable of 25 being answered "yes" or "no"?</p>	<p style="text-align: right;">Page 76</p> <p>1 THE WITNESS: Yeah. Again, usually not. Your 2 hypothetical includes that the patient has right rib pain 3 only, rib tenderness only. Boy, you know, in those 4 circumstances, it's really critical to evaluate the right 5 upper quadrant of the abdomen carefully, because you can 6 have a liver injury, and that would require imaging and 7 that would require labs. 8 BY MR. O'LOUGHLIN: 9 Q. Is it your claim that in this case with 10 Mr. Dunigan on May 6, 2016, the standard of care required 11 laboratory studies? 12 A. Yes. 13 Q. Why? 14 A. Because he was dizzy, not right, unstable, 15 unsteady, and was a known dialysis patient with 16 noncompliance. 17 Q. And if laboratory studies had been done, are you 18 able to offer an opinion as to what they -- first of all, 19 what lab studies do you think should have been done? 20 A. Well, checking the potassium level, you know, 21 would be paramount. I think that would certainly be the 22 main concern. I think would likely to have, you know, 23 offered an answer for the patient's symptoms, the -- 24 excuse me. 25 Were there any other labs that were indicated</p>

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<p style="text-align: right;">Page 77</p> <p>1 besides potassium, I think is going to be your follow-up 2 question. I think the answer to that is, well, you don't 3 typically just check a potassium level. You get a 4 bicarbonate, which gives you a sense as to the acid 5 balance of the patient. You get glucose, you get sodium 6 and so on.</p> <p>7 I think the critical action was checking the 8 patient's potassium, but I don't view the other labs as 9 important. But I do view them, as expected, if you're 10 checking potassium.</p> <p>11 Q. Is it your opinion that a potassium -- what 12 potassium level would require further assessment or 13 treatment?</p> <p>14 A. Well, it's hard to say. Some of this comes down 15 to what the patient's symptoms are. And it comes down to 16 what the patient's EKG shows. The determination for does 17 this patient need emergency hemodialysis for 18 hyperkalemia, that would hinge on the absolute potassium 19 level, as well as the patient's symptoms and EKG 20 findings, most likely.</p> <p>21 Q. Okay. What potassium level would require 22 further assessment and treatment in the absence of any 23 symptoms of hyperkalemia?</p> <p>24 A. Well, as we've spoken about, hyperkalemia can 25 have no symptoms. So a patient misses dialysis, has</p>	<p style="text-align: right;">Page 79</p> <p>1 assay. I think 5.1 to 5. You know, 8 or 9 is considered 2 kind of abnormal. Once you get above 6, it's really -- 3 you know, 5.8, 5.9 and 6 and up is considered more 4 emergent.</p> <p>5 Q. If a potassium level had been obtained in this 6 case and was 5.1, would any further treatment or 7 assessment have been required, with the understanding 8 that Mr. Dunigan was scheduled for dialysis that same 9 day, later in the day?</p> <p>10 A. You know, it's a difficult theoretical, because 11 the potassium wasn't checked and I don't know that it was 12 5.1. You're saying if it was 5.1, would there have been 13 any other standard of care requirements? Is that what 14 you're asking?</p> <p>15 Q. Yes.</p> <p>16 A. You know, I guess I agree with the cardiology 17 defense experts that said that an EKG should have been 18 done. I think in the circumstance where, you know, the 19 patient is dizzy, it would be useful to know, you know, 20 the cardiac rhythm. So yes, I think in addition to lab 21 evaluation an EKG was warranted, needed.</p> <p>22 But does that answer your question adequately?</p> <p>23 Q. Anything other than an EKG if, hypothetically, 24 the potassium had been obtained and was 5.1?</p> <p>25 A. Again, this is -- we're sort of entering a realm</p>
<p style="text-align: right;">Page 78</p> <p>1 critical hyperkalemia, that patient may have no symptoms. 2 We talked about this a couple of times. So I think that 3 makes your question not really answerable.</p> <p>4 Q. Well, here's the reason I asked that question 5 Doctor, because I asked you about the level of potassium 6 that would require further assessment and treatment, and 7 you said it depends upon the symptoms.</p> <p>8 A. Well, it depends on a variety of things. The 9 absolute level and whether or not there are symptoms and 10 whether or not there are EKG changes. So is there any -- 11 is there any circumstance where you can have a very high 12 potassium level, not have any symptoms and need emergency 13 hemodialysis? Yes. Is there an absolute number on that? 14 It depends. I think it depends in part on the opinion of 15 a nephrologist, a kidney specialist, who is required to 16 arrange the dialysis. So that phone consultation would 17 usually be held between the emergency physician and the 18 nephrologist, to help determine, do we have to do 19 dialysis now? Can we wait until the morning? Is the 20 patient stable to go until, you know, the next treatment 21 arranged as an outpatient?</p> <p>22 Q. What number would trigger that call?</p> <p>23 A. I don't know that there's an absolute number. 24 Certainly the high normal range would be, you know, 5., 25 you know, 5. I think it depends on the lab and the</p>	<p style="text-align: right;">Page 80</p> <p>1 of theoreticals here. I mean, in the case where, boy, 2 they checked the EKG and it's normal. They checked the 3 labs and they're normal. They checked the potassium and 4 it's normal. Then the question is: Can the patient 5 walk? Is he stable? Is he able to ambulate? And if the 6 answer to all of that is yes, I think that would be an 7 adequate evaluation of this patient.</p> <p>8 I think there are some additional, you know, 9 nuances that could be undertaken to help the patient, you 10 know, social services and so on. But I think that gets 11 into a vague realm unrelated to why the patient had 12 cardiac arrest shortly thereafter.</p> <p>13 Q. Are you able to offer an opinion as to what the 14 potassium level would have been if the laboratory test 15 had been done?</p> <p>16 A. No. I can't say what the laboratory value would 17 have been. My opinion is that it likely would have been 18 critically elevated, but I -- I don't know, because it 19 wasn't done.</p> <p>20 Q. Which is -- and which would you say that you 21 could offer an opinion of to a greater than 50 percent 22 probability, as to the level of a potassium if it had 23 been done?</p> <p>24 A. You want me to put a number of potassium, a 25 potassium level number? I have no clue. I don't feel</p>

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<p style="text-align: right;">Page 81</p> <p>1 comfortable answering that question. I don't know what 2 it would have been. 3 Q. Would it be fair to say that you could not offer 4 the opinion that the potassium level would have been 5 greater than 5.1? 6 A. Oh, most likely. 7 Q. Most likely what? 8 A. Would have been greater than 5.1. 9 Q. And what do you base that opinion on? 10 A. The patient's presentation, clinical history, 11 and findings. In other words, all these things we keep 12 talking about, the dizziness, the "I don't feel right." 13 "I missed dialysis." Frequently noncompliant. Unsteady. 14 Falling. 15 Q. You would agree, 5.1 is the upper range of 16 normal? 17 A. Again, I don't know. It depends on the lab and 18 the assay that's used. Is that what -- I would have to 19 review. I don't know if I have what that hospital does. 20 Q. What's your understanding of when Mr. Dunigan 21 left Borgess, before presenting to Bronson? 22 A. Yes. He left on the 5th. No. Yes, he left on 23 the 5th. 24 Q. Do you know what his potassium level was at 25 Borgess?</p>	<p style="text-align: right;">Page 83</p> <p>1 Mr. Dunigan's death? 2 A. Did you say what caused his death? 3 Q. Correct. 4 A. Yeah. Well, I mean, what caused him to have 5 cardiac arrest? Is that what you're asking my opinion 6 on, what caused his cardiac arrest? 7 Q. Yes. If you have an opinion as to cause of 8 death. If you don't, that's fine. 9 A. Well, I've read the autopsy and I'm not a 10 pathologist. I know that the autopsy was done sometime 11 after he died, making -- 12 Q. As most are. 13 A. Well, yeah. But sometimes they're done quickly, 14 within hours, and sometimes they're done, you know, 12 or 15 24 hours later. I've read the autopsy. I think, you 16 know, my opinion is that more likely than not that his 17 potassium level was contributory to his cardiac arrest. 18 As you pointed out, this is sort of theoretical. I don't 19 have hard proof of that, because the potassium level 20 wasn't checked. But if there's a hemodialysis patient 21 that's in cardiac arrest, it's a reasonable presumption 22 to make that the patient has hyperkalemia, causing his 23 cardiac arrest or her cardiac arrest. 24 Q. Did Mr. Dunigan have other co-morbidities that 25 increased his risk of cardiac death?</p>
<p style="text-align: right;">Page 82</p> <p>1 A. I wrote down that it was 6.8 when he arrived. 2 And I did not see if it was rechecked. I don't know. 3 After that, I'm not sure. I know he got dialysis. I 4 looked at the dialysis orders. He had dialysis on the 5 30th of April and the 1st of May and then there was 6 another order for hemodialysis on the 5th that he did not 7 get. So the last hemodialysis he had had -- had was the 8 morning of May 1st. That's Page 1950 of those records. 9 Q. Do you know what his potassium was -- I'm sorry, 10 yeah -- his potassium was on May 2? 11 A. No. Again, I know that it was 6.8 when he got 12 there on the 30th. Beyond that, I don't know. 13 Q. Do you know what it was on May 3? 14 A. No. 15 Q. Would it impact your opinions at all if his 16 potassium was 4.8 and 5.1 on those dates? 17 A. No. It wouldn't. 18 Q. Why not? 19 A. It wouldn't affect my opinion. 20 Well, because potassium can climb quickly. It 21 can climb quickly, even more so if you get injured and 22 contuse your muscles. So I don't think knowing that it 23 was normal three days before he came in is particularly 24 useful. 25 Q. Do you have an opinion as to what caused</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Absolutely. 2 Q. What were those? 3 A. Oh, heart failure are chief among the others. I 4 can look at his medical history here. 5 Heart failure. Chronic kidney disease. 6 Coronary disease. Hypertension, and so on. Diabetes. 7 Q. And could those conditions have caused a sudden 8 cardiac death in the absence of hyperkalemia? 9 A. Yes. 10 Q. Do you have an opinion as to Mr. Dunigan's life 11 expectancy if he had been treated, as you claim he should 12 have been treated, at Bronson? 13 A. No. 14 Q. Would you agree that it is dramatically 15 shortened, given his end-stage renal disease? 16 A. I don't have an opinion about that. 17 Q. What evidence are you aware of that would 18 indicate that Mr. Dunigan was unstable as of the time he 19 was wheeled into the waiting room? 20 A. Well, his gait was not observed. He was never 21 asked to stand outside of the wheelchair. So if you mean 22 unstable as in he cannot support his weight with his 23 legs, or do you mean unstable in a more global sense of 24 an EMTALA definition, for instance? 25 Q. Let's go by the EMTALA definition.</p>

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<p style="text-align: right;">Page 85</p> <p>1 A. Okay.</p> <p>2 Q. Are you aware of any evidence, up to the time he</p> <p>3 is wheeled into the waiting room, indicating that he was</p> <p>4 unstable --</p> <p>5 A. Yes. The evidence is --</p> <p>6 Q. -- as --</p> <p>7 A. Go ahead. I'm sorry, I cut you off.</p> <p>8 Q. No. I was just going to add, as used in EMTALA</p> <p>9 or your understanding of EMTALA.</p> <p>10 A. Yeah. That his instability is evidenced by</p> <p>11 these things we talked about. He's a dialysis patient</p> <p>12 that's noncompliant. He was dizzy, weak and not right.</p> <p>13 He was falling. That's all evidence that he was</p> <p>14 unstable.</p> <p>15 Q. Okay. Other than the dizzy, was he any of those</p> <p>16 things while he was in the emergency department?</p> <p>17 A. Well, what else did I list? He was -- he was a</p> <p>18 dialysis patient, yeah, he was that. You know, they</p> <p>19 didn't stand him to walk, to see if he was able to</p> <p>20 support his weight, so I don't know the answer to that.</p> <p>21 I think that answers the question. I'm not sure.</p> <p>22 Q. Well, you said weak. Was he weak while he was</p> <p>23 in the emergency department?</p> <p>24 A. Again, that doesn't appear to have been</p> <p>25 specifically addressed in terms of global weakness,</p>	<p style="text-align: right;">Page 87</p> <p>1 A. Yeah.</p> <p>2 Q. All right. Is "lost" a term used in the past</p> <p>3 tense?</p> <p>4 A. Yes. No, I don't -- I don't disagree with you,</p> <p>5 that she's saying he lost his balance getting off the bus</p> <p>6 and that he didn't feel right. I get that that's being</p> <p>7 documented. The follow-up question to that is: Is this</p> <p>8 persisting? Or if you try to stand, is that going to</p> <p>9 happen again? That's not addressed. And instead, it's a</p> <p>10 dangerous assumption to say, well, this is a mechanical</p> <p>11 fall. In light of this, that's a little preposterous</p> <p>12 really. I mean --</p> <p>13 Q. My first question was whether you would agree</p> <p>14 that the statement "lost my balance getting off the bus"</p> <p>15 and "just didn't feel right" was historical, referring to</p> <p>16 the time he fell?</p> <p>17 A. Yes.</p> <p>18 Q. That was my question.</p> <p>19 A. Okay. I answered it.</p> <p>20 Q. Eventually.</p> <p>21 Any evidence of any instability other than</p> <p>22 that -- the word "dizziness," of any instability of any</p> <p>23 kind while he was in the emergency department?</p> <p>24 A. No. Although again we're talking about -- you</p> <p>25 want me to say there was -- there's no evidence of it.</p>
<p style="text-align: right;">Page 86</p> <p>1 ability to ambulate. But his strength as documented is</p> <p>2 normal, by the physician. Doesn't he say -- here, let me</p> <p>3 look.</p> <p>4 "Strength normal," yeah, he wrote that.</p> <p>5 Q. You also used the term "not right"?</p> <p>6 A. Right.</p> <p>7 Q. What evidence is there that he was, quote, "not</p> <p>8 right," close quote, while in the emergency department?</p> <p>9 A. Well, just the nurse's documentation, as we've</p> <p>10 talked about, that he had dizziness, he lost his balance</p> <p>11 and just didn't feel right.</p> <p>12 Q. I know this is -- you would agree that lost his</p> <p>13 balance and just didn't feel right was historical</p> <p>14 information referring to the time of the fall?</p> <p>15 A. Well, I think you're trying to get me to say</p> <p>16 that there was this transient episode while he was on the</p> <p>17 bus, and that that transient episode that made him weak,</p> <p>18 dizzy, fall and feeling not right resolved entirely. And</p> <p>19 I don't know if that's the case. I -- it's sort of --</p> <p>20 you're -- that's an assumption that is being made that we</p> <p>21 can't clarify, because the records don't ask the patient,</p> <p>22 Why did you fall? Are you still unsteady? Are you going</p> <p>23 to fall again? Are you going to pass out? So we</p> <p>24 don't -- we don't -- it's an assumption.</p> <p>25 Q. How -- all right. You're looking at that entry?</p>	<p style="text-align: right;">Page 88</p> <p>1 But they didn't do the appropriate step of testing it, of</p> <p>2 looking for it. So you're saying is there -- is there</p> <p>3 any evidence that -- it's inappropriate. It should have</p> <p>4 been addressed. And it wasn't. So no, I don't see</p> <p>5 evidence of that, but --</p> <p>6 Q. Would it be significant to you if Mr. Dunigan</p> <p>7 was able to get off the paramedic's gurney and get onto</p> <p>8 the emergency department bed on his own?</p> <p>9 A. That would be a piece of information speaking to</p> <p>10 his ability to ambulate. But it is not really an</p> <p>11 ambulation trial.</p> <p>12 Q. Well, what would be an ambulation trial?</p> <p>13 A. Standing and walking.</p> <p>14 Q. And what would indicate that that trial was</p> <p>15 normal?</p> <p>16 A. Steady gait.</p> <p>17 Q. Anything else?</p> <p>18 A. Well, I think it would be reasonable to assess</p> <p>19 somebody's gait with more than just "Can you stand</p> <p>20 momentarily?" Rather, "Can you stand and walk? Can you</p> <p>21 pivot and turn?"</p> <p>22 But am I getting to your question appropriately?</p> <p>23 I'm not sure.</p> <p>24 Q. I don't know if you did or not. But let me ask</p> <p>25 another one.</p>

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<p style="text-align: right;">Page 89</p> <p>1 What was Mr. Dunigan's gait prior to</p> <p>2 presentation to Bronson and prior to the fall?</p> <p>3 A. I don't know. Again, there's evidence of --</p> <p>4 there's mention of a previous stroke and partial</p> <p>5 paralysis.</p> <p>6 Q. Do you know whether he was able to ambulate on</p> <p>7 his own, without a cane, without support, as a baseline</p> <p>8 condition, meaning before the fall?</p> <p>9 A. That I don't know.</p> <p>10 Q. Do you -- are you aware of any evidence</p> <p>11 indicating whether Mr. Dunigan could ambulate on his own</p> <p>12 any better than is depicted in the waiting room video?</p> <p>13 A. No, I don't know. But I would not expect him to</p> <p>14 say something wasn't right if it was his normal baseline.</p> <p>15 Q. He had no loss of consciousness when he fell;</p> <p>16 true?</p> <p>17 A. That's not documented.</p> <p>18 Q. It is documented by the EMS, isn't it?</p> <p>19 A. Okay. I don't know. I don't have any knowledge</p> <p>20 that he lost consciousness. I have no knowledge of that.</p> <p>21 That would be --</p> <p>22 Q. Do you deny it?</p> <p>23 A. Okay. That would be new information to me. I</p> <p>24 don't believe he did.</p> <p>25 Q. Meaning, if he lost consciousness, that would be</p>	<p style="text-align: right;">Page 91</p> <p>1 6:00 p.m., so --</p> <p>2 Q. Did you see the EMT record that said he had no</p> <p>3 complaints of weakness, dizziness, numbness, tingling,</p> <p>4 shortness of breath, nausea or vomiting?</p> <p>5 A. Right, that's right in the same sentence that</p> <p>6 says he has no chest pain. Yes, I see where that's</p> <p>7 documented. But it's -- at least one part of that</p> <p>8 sentence is obviously inaccurate. We talked about that</p> <p>9 earlier.</p> <p>10 Q. You reviewed the surveillance videos from the</p> <p>11 emergency department and the external camera outside the</p> <p>12 hospital and the patrol car camera?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Up to the time Mr. Dunigan is placed in the</p> <p>15 police car, are you aware of any indication that he</p> <p>16 requested any sort of help or medical attention?</p> <p>17 A. That he verbally requested that? No.</p> <p>18 Q. Are you aware of any evidence that he asked for</p> <p>19 any kind of medical care?</p> <p>20 A. Not to my knowledge. No.</p> <p>21 Q. Are you aware of whether he stated that he had</p> <p>22 any sort of medical problem?</p> <p>23 A. Again, same answer.</p> <p>24 Q. Are you aware of whether he exhibited any</p> <p>25 shortness of breath?</p>
<p style="text-align: right;">Page 90</p> <p>1 new information to you?</p> <p>2 A. Correct.</p> <p>3 Q. And you're not aware of any information</p> <p>4 indicating that he did lose consciousness; true?</p> <p>5 A. Correct.</p> <p>6 Q. And the EMS noted that he denied dizziness;</p> <p>7 true?</p> <p>8 A. I don't know about that specifically. I can</p> <p>9 look at the record. I do remember them saying they asked</p> <p>10 why he fell, and he was unable to provide that</p> <p>11 information. They couldn't obtain that. Let me find</p> <p>12 that.</p> <p>13 Well, it says here -- let me see. It says he</p> <p>14 ambulated with assistance of the EMT and they asked --</p> <p>15 they're supposed to ask is the patient unable to</p> <p>16 ambulate? Yes, no. They didn't answer.</p> <p>17 And then the question about loss of</p> <p>18 consciousness, is that what we're talking about?</p> <p>19 Q. That was one of the things.</p> <p>20 A. And the other thing I was looking for was -- oh,</p> <p>21 they asked him why he fell. And he was unable to provide</p> <p>22 an answer to that. Let me see if I can find that.</p> <p>23 Do you have that piece? It might make it</p> <p>24 faster. Yeah, the patient was not descriptive in how he</p> <p>25 had fallen, but he stated that he had fallen at</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Whether he exhibited shortness of breath --</p> <p>2 whether he complained of shortness of breath or he was</p> <p>3 perceived to be short of breath? Or can --</p> <p>4 Q. Either.</p> <p>5 A. Well, I mean, you know, at some point during</p> <p>6 his -- if you watch the video, he looks like he's in</p> <p>7 respiratory distress and failure more so as time goes by.</p> <p>8 But so from an outside observer, yes. Does he</p> <p>9 specifically say, "I'm short of breath, I can't breathe"?</p> <p>10 Not to my knowledge.</p> <p>11 Q. Okay. That's part of the question. You're not</p> <p>12 aware that he ever complained of shortness of breath.</p> <p>13 When do you believe he exhibited shortness of breath --</p> <p>14 A. Well, when he --</p> <p>15 Q. -- before the time he was placed in the police</p> <p>16 car?</p> <p>17 A. Well, yeah, I mean, you can see that he's in</p> <p>18 respiratory failure. Respiratory distress is probably a</p> <p>19 better phrase for a lot of the time that he's in the</p> <p>20 lobby, and then certainly that becomes amplified on</p> <p>21 the -- when he's loaded into the police vehicle. It's</p> <p>22 quite clear he's in respiratory failure at that point.</p> <p>23 Q. What is it that you were able to see that told</p> <p>24 you he was in respiratory distress for a lot of time</p> <p>25 while he was in the waiting room?</p>

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<p style="text-align: right;">Page 93</p> <p>1 A. Well, as I said, I think it's -- you know, 2 respiratory distress evidenced by irregular and rapid, 3 heavy breathing, that's -- you know, I think of less 4 importance than his becoming limp, weak and unable to 5 stand, in terms of his need for reassessment. But I 6 think that he does have respiratory distress, blurring 7 into respiratory failure, over the hours that he's then 8 eventually loaded into the police car. But, again, I 9 view that as less critical than the, you know, motor 10 weakness. 11 Q. Did you watch the entire video in the waiting 12 room? 13 A. I watched it on -- I sped it up, for most of it. 14 There were times I slowed it down to normal speed. 15 Q. And it's your claim that at normal speed, you 16 could discern difficulty breathing or irregular and 17 rapid, heavy breathing? 18 A. I think that's reasonable. There are times that 19 it looks that way, yes. 20 Q. As far as the events when you said that he 21 demonstrated limpness and inability to stand, could you 22 tell from looking at the video whether that was him 23 purposely going limp and refusing to stand, versus 24 inability? 25 A. No. I don't think I can say that. Although,</p>	<p style="text-align: right;">Page 95</p> <p>1 that Mr. Dunigan had an emergency medical condition? 2 A. I don't know. 3 Q. Meaning you're not aware of any evidence 4 indicating that any of the security officers actually 5 recognized that Mr. Dunigan had a -- an emergency medical 6 condition or a serious medical condition? 7 A. I don't know. I'm not aware. 8 Q. Okay. What is your understanding of what would 9 constitute an EMTALA violation? 10 MR. HARRINGTON: Objection. Calls for a legal 11 conclusion. 12 But go ahead and answer. 13 THE WITNESS: Discharging a patient with an 14 emergency medical condition that had not been stabilized. 15 As it relates to this. I mean, there are other 16 circumstances of EMTALA violations, but I think you want 17 me to, you know, stick to this case. 18 BY MR. O'LOUGHLIN: 19 Q. I do want you to stick to this case. 20 But as far as your opinions on EMTALA, do you 21 know whether an EMTALA violation includes situations 22 where the patient may have an emergency medical 23 condition, but the provider doesn't recognize that 24 emergency medical condition? 25 A. In other words, if they failed to look for, say,</p>
<p style="text-align: right;">Page 94</p> <p>1 you know, it's difficult to tease this away from his 2 ultimate demise and understanding that he was -- you 3 know, by the time he's being -- four people are loading 4 him into a police car and he's dead weight, it's quite 5 clear then that that's -- that he's just plain, you know, 6 weak. 7 Q. And do -- I'm sorry. Go ahead. 8 A. So I think that's all I have to say about that. 9 Q. And do you know if he was dead weight because he 10 was purposefully going limp, or was it because he was 11 unable to move? 12 A. I have no reason to believe he was feigning 13 anything. 14 Q. Well, the purposefully not cooperating, going 15 limp and not being able to move, doesn't necessarily mean 16 feigning anything. Were you able to distinguish -- based 17 on the video, whether up to the time he was loaded into 18 the police car, he was ever unable to stand, as opposed 19 to going limp or refusing to stand? 20 A. I don't know or have opinion about that. 21 Q. Are you aware of any evidence -- and you now 22 reviewed the depositions of the security guards, you've 23 reviewed all of the surveillance video, are you aware of 24 any evidence that either the security -- that the 25 security guards ever actually perceived or recognized</p>	<p style="text-align: right;">Page 96</p> <p>1 hyperkalemia and the patient had hyperkalemia, was 2 discharged unstable, would that constitute an EMTALA 3 violation you're asking? Is that sort of your question? 4 Q. If that's your understanding, yeah, you can 5 answer that one. And then I'll ask that question or a 6 different question. 7 A. Well, yes. That would be -- that would be a 8 violation of -- of the patient's stabilization. And 9 inadequate screening. 10 Q. In your opinion, could Mr. Dunigan had presented 11 to any emergency department -- given his medical history 12 and his co-morbidities, could he have presented to any 13 emergency department, at any time, without getting 14 laboratory studies and an EKG? 15 A. Yes. 16 Q. Under what circumstances? 17 A. Well, let's say he cut his finger cooking in the 18 kitchen and he wanted stitches. He had a cut on his 19 finger, that circumstance would not call for checking of 20 labs and so on. 21 Q. Why not? 22 A. Well, he, you know, presumably accidentally cut 23 his finger with a knife. He didn't get, you know, dizzy, 24 not feeling right and fell. It's a different 25 circumstance.</p>

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<p style="text-align: right;">Page 97</p> <p>1 Q. Why did he cut his finger? Did he have blurred 2 vision or loss of perception?</p> <p>3 A. You know, again in this theoretical that I made 4 up where he cut his finger, you know, I think he just, 5 you know, cut his finger accidentally in the kitchen. 6 You've done it, I've done it, we've all done that; right?</p> <p>7 Q. But -- so your -- so a reasonable emergency 8 medical physician asked this patient who cut his finger, 9 he knows he has a -- has end-stage renal disease, that 10 he's noncompliant with dialysis, that he has history of 11 heart disease, diabetes, stroke, and now he's come in 12 with a cut finger, it wouldn't be an EMTALA violation to 13 simply stitch the finger and send him on his way?</p> <p>14 A. Right. Although knowing that he was 15 noncompliant with dialysis would give me a very low 16 threshold to check. I would probably ask some follow-up 17 questions. That's sort of getting to what you were 18 asking: Why did you cut your finger? What happened?</p> <p>19 Q. Okay. And if you ask those questions, what 20 would allow you to discharge the patient without 21 violating EMTALA?</p> <p>22 A. Well, if the answer is I got -- I couldn't see, 23 I got weak, I fell with the knife, and things weren't 24 right, I think it would be a violation of both EMTALA and 25 standard of care to not pursue critical hyperkalemia and</p>	<p style="text-align: right;">Page 99</p> <p>1 A. I just answered the question, and I'll say it 2 again, which is that in your theoretical case where the 3 nurse -- you're not saying the nurse didn't write it. 4 You're saying the nurse wrote it in a parallel universe 5 and the physician was unaware; is that accurate?</p> <p>6 Q. Sure.</p> <p>7 A. And that the physician never asked or said that 8 it was a mechanical fall, I think it still constitutes a 9 breach of this adequate, you know, addressing of an 10 emergent medical condition. In other words, the patient, 11 you know, still went on to have the trouble that he had, 12 and the physician's lack of awareness of the nurse's 13 documentation does not make that emergency medical 14 condition go away.</p> <p>15 Q. But it would impact whether the physician was 16 aware that there was an emergency medical condition; 17 true?</p> <p>18 A. Well, your -- it's a circular argument. You're 19 saying the physician was unaware that there was an 20 emergency medical condition. So he was unaware of an 21 emergency medical condition; right?</p> <p>22 Q. Well, if he didn't know of that history that 23 you've interpreted as meaning that the patient was dizzy 24 or lost his balance or didn't feel right, and that's why 25 he fell, if he wasn't aware of that, he wouldn't have had</p>
<p style="text-align: right;">Page 98</p> <p>1 not pursue further workup for missed dialysis.</p> <p>2 Q. By the way, did you -- are you aware of any 3 evidence indicating that Dr. Rigot oversaw or knew of 4 that notation by the nurse of dizzy or dizziness --</p> <p>5 A. I don't --</p> <p>6 Q. -- or the words under it?</p> <p>7 A. I don't know. I don't know if he saw that.</p> <p>8 Q. If he didn't see it and didn't know of that 9 history, would there have been an EMTALA violation here?</p> <p>10 A. Well, he -- you know, I think there's a 11 reasonable expectation that he pursue those questions on 12 his own, if not owning the nursing documentation. In 13 other words, if he's not going to read and digest and own 14 the nurse's documentation about why the patient fell, 15 that he was dizzy and didn't feel right, then it would 16 be, you know, standard for him to take that history 17 himself. Or better yet, specifically address, well, I 18 took this history and he said he wasn't dizzy. I see 19 that the nurse wrote this, we clarified this by talking 20 to him together, and so on.</p> <p>21 Q. If Dr. Rigot did not see the nurse's notes 22 regarding dizziness and how the patient felt when he fell 23 and did not get a history that the fall was caused by 24 dizziness or was anything other than a mechanical fall, 25 would there have been an EMTALA violation in this case?</p>	<p style="text-align: right;">Page 100</p> <p>1 to have perceived that this was an emergency medical 2 condition; true?</p> <p>3 A. I can't agree with that, because I feel like the 4 physician has an obligation to dig deeper, to ask the 5 questions about: Why did you fall? What happened? And 6 if he was unaware of the nurse's documentation, that 7 doesn't absolve him of the duty to find that information 8 out.</p> <p>9 Q. But let's say he didn't have that information.</p> <p>10 A. Because he didn't ask it or because he didn't 11 read the nurse's note?</p> <p>12 Q. Because he didn't read the nurse's notes and he 13 didn't ask it beyond asking about the circumstances of 14 the fall and the patient said he accidentally fell 15 getting off a bus, onto cement.</p> <p>16 A. But your theoretical falls apart, because the 17 nurse did ask and he did say, "I didn't feel right and I 18 was dizzy."</p> <p>19 Q. Yeah. But you can challenge the hypothetical. 20 But this is the question I'm asking and it is a 21 hypothetical. Everything else is the same here except 22 Dr. Rigot did not see the nurse's note that we've been 23 referring to.</p> <p>24 A. Uh-huh.</p> <p>25 Q. And the history he obtained regarding the fall</p>

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<p style="text-align: right;">Page 101</p> <p>1 is that the patient accidentally fell getting off of a 2 bus, onto cement.</p> <p>3 MR. HARRINGTON: I'm going to object to the 4 form. And foundation. Improper hypothetical. It 5 contains facts not in evidence.</p> <p>6 THE WITNESS: Yeah. Again, I think the 7 physician doesn't address the cause of the fall by saying 8 it was an accident. But I -- so I don't know. I stand 9 by what I've said.</p> <p>10 BY MR. O'LOUGHLIN:</p> <p>11 Q. I don't know what you said. But I'm trying to 12 get an answer to my question.</p> <p>13 A. Okay.</p> <p>14 MR. HARRINGTON: The one I objected to?</p> <p>15 MR. O'LOUGHLIN: Yes. Which obviously doesn't 16 change whether or not I can ask it or whether he can 17 answer it.</p> <p>18 THE WITNESS: Okay. Sorry.</p> <p>19 MR. HARRINGTON: I didn't instruct him not to 20 answer.</p> <p>21 MR. O'LOUGHLIN: Pardon me?</p> <p>22 MR. HARRINGTON: I said I didn't instruct him 23 not to answer.</p> <p>24 MR. O'LOUGHLIN: Okay.</p> <p>25 ///</p>	<p style="text-align: right;">Page 103</p> <p>1 time of his exam, was not dizzy, had no sensory deficits, 2 and was alert and oriented. Under that hypothetical, 3 would the doctor be required to recognize that this was 4 an emergency medical condition?</p> <p>5 A. Well, you're taking pieces that exist out of 6 this case. You're taking facts out of this case and 7 making them go away, and you're asking me if he was -- if 8 this fabricated Mr. Dunigan wasn't dizzy and didn't feel 9 lousy and didn't almost pass out, or whatever happened, 10 if you're saying all those things didn't happen and he 11 fell, is there some duty to figure out why he fell? Or 12 is your question if he specifically says, "I stumbled 13 over uneven footing and tripped," is that your question?</p> <p>14 Do you understand there's two distinctions?</p> <p>15 Q. Yes, I do. And my question is this: If 16 everything else is the same, except hypothetically that 17 nurse's note does not exist. And the history the doctor 18 gets is that the patient accidentally fell getting off of 19 the bus, onto cement. And the doctor is aware that there 20 was no loss of consciousness. That there was no syncope 21 or near syncope. That the patient, on presentation, was 22 not dizzy and had no sensory deficits. And that the 23 patient was alert and oriented, that he had normal mental 24 status. He had no numbness or tingling or weakness. 25 Would the physician, in your opinion, be required to</p>
<p style="text-align: right;">Page 102</p> <p>1 BY MR. O'LOUGHLIN:</p> <p>2 Q. Doctor, in a hypothetical situation where 3 everything is the same as this case, except the 4 patient -- that the doctor does not see the nurse's note 5 stating "dizziness" and the words under "dizziness," and 6 gives a history that the patient accidentally fell 7 getting off of a bus, onto cement, in that hypothetical 8 situation, would the doctor be required to recognize that 9 the patient has an emergency medical condition?</p> <p>10 A. Yes. I think the physician had a duty to 11 recognize the emergency medical condition even if he 12 didn't see the nursing notes, because the patient fell. 13 There are causes of falls that he is not addressing. 14 He's addressing the consequence of the fall, not the 15 cause of the fall. So if he didn't read the nursing 16 note, in this theoretical Mr. Dunigan then -- and he 17 wasn't aware that the nurse was writing this, and his 18 history was, well, the patient fell, that does not 19 adequately address the issue to identify the emergency 20 medical condition. He doesn't address the cause of the 21 fall.</p> <p>22 Q. All right. And now I want to go with that same 23 hypothetical, except that he's also aware that there was 24 no loss of consciousness. That the patient had no 25 syncope or near syncope. And that the patient, as of the</p>	<p style="text-align: right;">Page 104</p> <p>1 recognize that the patient had an emergency medical 2 condition, other than the chest contusion or rib 3 contusion from the fall?</p> <p>4 MR. HARRINGTON: Objection to form. Foundation. 5 Improper hypothetical. Facts not in evidence and 6 excluding facts that should be. Go ahead.</p> <p>7 THE WITNESS: I -- honestly, I'm a little 8 baffled -- that was a long question. I -- I -- what 9 you're not asking is if the patient tripped and stumbled 10 and fell, or stumbled over something and fell, that's not 11 your question. Your question is this other theoretical 12 about, well, if he wasn't dizzy and the physician knew 13 that, you know, the patient wasn't -- didn't lose 14 consciousness and the nurse didn't document that. It's a 15 very difficult question. I -- I honestly don't know how 16 to answer your question.</p> <p>17 BY MR. O'LOUGHLIN:</p> <p>18 Q. If the patient did trip and fall, resulting in 19 the fall off the bus, and that history was obtained by 20 Dr. Rigot, would he be required to recognize that this 21 was an emergency medical condition which required further 22 screening and/or admission in order to comply with 23 EMTALA?</p> <p>24 A. No. For the physician part of it, that is true. 25 Although once the patient is in the lobby, EMTALA still</p>

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<p style="text-align: right;">Page 105</p> <p>1 applies. So I think that for the -- you're pushing the 2 physician and the EMTALA into one thing, and I don't 3 think they are one thing. I think EMTALA is not an 4 event. It's a process whereby the patient remains sort 5 of within the hospital. During that time, I don't really 6 view Dr. Rigot's involvement in this theoretical -- and 7 he tripped and fell and gets discharged to the lobby, is 8 Dr. Rigot off the hook at that point if he doesn't check 9 anything? I think the reasonable answer is yes. 10 However, EMTALA still applies. The patient is still as a 11 continuing part of his hospital stay. 12 Q. Based on your interpretation of EMTALA? 13 A. Yes. 14 Q. After Mr. Dunigan was wheeled into the waiting 15 room, did he ever again present to the hospital for care 16 of an emergency medical condition? 17 A. I've answered this question. You -- the answer 18 is, he doesn't appear to verbalize anything, but does he 19 re-present? Does he leave the hospital premises and come 20 back and ask to be seen again? No. Does he verbalize 21 something? As best I can tell, no. But is he still part 22 of the same ED stay and ER visit? Yes, I would argue. 23 Q. After Mr. Dunigan is wheeled into the emergency 24 department, are you aware of any evidence indicating that 25 any hospital employee recognized that he had an emergency</p>	<p style="text-align: right;">Page 107</p> <p>1 nor doctor, indicates that Mr. Dunigan just didn't feel 2 right in the emergency department; true? 3 A. The nurse documents that there's dizziness. The 4 timing of that dizziness, as we've talked about, is not 5 totally clear. Again, I would answer that question with 6 the caveat that the patient was not really sort of tested 7 or wasn't really ambulated. 8 I've said this over and over. And so, you know, 9 you're asking me is there evidence that they saw that he 10 was weak in the ER? Well, no. There wasn't evidence 11 that they saw that he was weak in the ER. Not until 12 later, when he's out in the lobby. 13 Q. Do you know whether, out in the lobby, what you 14 observed was his baseline condition or some new weakness 15 or inability to ambulate? 16 A. I still don't know, as we've -- you've asked me 17 that a couple of times. I still don't know the answer to 18 that question. But it's clear that his weakness is 19 obvious, progressive, and profound, you know, certainly 20 by the time he's being loaded into the police car. 21 Q. Then let me -- 22 THE REPORTER: I'm sorry. I didn't hear the 23 question and the objection. 24 BY MR. O'LOUGHLIN: 25 Q. You wouldn't be able to tell from the video or</p>
<p style="text-align: right;">Page 106</p> <p>1 medical condition? 2 MR. HARRINGTON: Foundation. Form. 3 THE WITNESS: It does not appear they did. I 4 think the nurse drove at it with her documentation, but 5 no. 6 BY MR. O'LOUGHLIN: 7 Q. I'm sorry, I didn't hear that. 8 A. I said I think the nurse drove at it with her 9 documentation, but no. I don't think it was really 10 recognized. 11 Q. That what nurse drove at it, with what 12 documentation? 13 A. The nurse that wrote that he was dizzy, weak, 14 didn't feel right, and so on. That nurse drove at the 15 idea that he was having an emergency medical condition. 16 But I don't -- I wouldn't say that -- I think your 17 question was did anybody -- is there evidence that any 18 hospital person realized that there was an emergency 19 medical condition? And I think I answered no. 20 Q. That nurse -- neither that nurse, nor any other 21 healthcare provider, indicated in any way that 22 Mr. Dunigan exhibited weakness in the emergency 23 department; true? 24 A. Not that's documented. 25 Q. Neither that nurse, nor any healthcare provider,</p>	<p style="text-align: right;">Page 108</p> <p>1 any other evidence you've seen that Mr. Dunigan was 2 unable to stand or walk because of his baseline condition 3 or because of some new indication? 4 A. No. 5 Q. Or some new condition? 6 A. No, no, no, no. Your question was about was he 7 feigning or was he putting on, I think? Your question 8 that he objected to. 9 Q. And you couldn't tell from the video; true? 10 A. Again -- 11 MR. HARRINGTON: Objection. Form. Foundation. 12 BY MR. O'LOUGHLIN: 13 Q. Whether he was feigning or putting on or 14 deliberately going limp and not cooperative? 15 A. No. I could not tell. 16 MR. O'LOUGHLIN: I'll pass the witness. 17 MR. VANDERLAAN: Good morning, Doctor. Do you 18 need a break? I'm going to be very short. 19 MR. HARRINGTON: I do, but I don't know if the 20 doctor does. 21 THE WITNESS: I'm okay taking a break. I don't 22 need it, but if you want to pause, that's fine. 23 MR. VANDERLAAN: I don't. I'm going to be very 24 short. So if someone needs a break, that's fine, but -- 25 MR. HARRINGTON: I've got to use the restroom.</p>

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<p style="text-align: right;">Page 109</p> <p>1 THE WITNESS: All right. Let's pause again.</p> <p>2 (Recess)</p> <p>3</p> <p>4 EXAMINATION</p> <p>5 BY MR. VANDERLAAN:</p> <p>6 Q. Doctor, my name is Allan VanderLaan. I</p> <p>7 represent the two officers who transported Mr. Dunigan to</p> <p>8 the jail from the Kalamazoo County Department of Public</p> <p>9 Safety. Okay?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Am I safe in assuming that you don't plan on</p> <p>12 offering any expert opinions in regard to what those two</p> <p>13 officers did or didn't do?</p> <p>14 I mean, you're not offering any expert opinions</p> <p>15 as to the officers; correct?</p> <p>16 A. No.</p> <p>17 MR. HARRINGTON: I'm sorry, Al, you mean your</p> <p>18 client officers; right?</p> <p>19 BY MR. VANDERLAAN:</p> <p>20 Q. Yes, I'm sorry. There were security officers</p> <p>21 there and then there were two officers from the Kalamazoo</p> <p>22 Department of Public Safety. They transported</p> <p>23 Mr. Dunigan. And I represent those two fellas.</p> <p>24 A. Okay.</p> <p>25 Q. And I'm wondering -- so I'm just wondering that</p>	<p style="text-align: right;">Page 111</p> <p>1 full assist. During all this time, he's clearly in</p> <p>2 distress. That's my opinion.</p> <p>3 I don't -- I don't have a -- you know, again, I</p> <p>4 don't really consider myself an expert in police policy</p> <p>5 and procedure or management of this kind of thing. But</p> <p>6 I -- you know, I would certainly add that my opinion is</p> <p>7 that the patient was in distress throughout this entire</p> <p>8 time and was inappropriately forcibly removed.</p> <p>9 Q. You have heard the old saying that if you're a</p> <p>10 hammer, everything looks like a nail?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So when you say he was clearly in</p> <p>13 distress, if -- I think you have acknowledged that by</p> <p>14 simply looking at the video, you cannot say with a</p> <p>15 reasonable degree of certainty whether he was doing</p> <p>16 things on purpose, in other words, faking, or if he was</p> <p>17 in actual medical distress, just by looking at the video?</p> <p>18 I mean, I know from hindsight, it's obvious he was in</p> <p>19 distress, but by looking at the video, you can't make</p> <p>20 that judgment, can you?</p> <p>21 A. You can't. I don't think you can say what his</p> <p>22 intent was based on the video, if that's what you're</p> <p>23 asking me.</p> <p>24 Q. Yes.</p> <p>25 At some point, did you follow the video far</p>
<p style="text-align: right;">Page 110</p> <p>1 you're not an expert in police procedures or policies or</p> <p>2 probably have never been a police officer, and you're not</p> <p>3 offering any expert opinions regarding those two</p> <p>4 officers, are you?</p> <p>5 A. No.</p> <p>6 MR. HARRINGTON: I'm going to object. Hang on,</p> <p>7 let me just put a slight objection. I'm going to object</p> <p>8 to the form of the question. Just to the extent of, you</p> <p>9 know, Allan, you have a client who was there at the</p> <p>10 hospital, and I don't know if any of the opinions or</p> <p>11 criticisms the doctor gave regarding the officers would</p> <p>12 include Officer Nugent. So form. Foundation.</p> <p>13 BY MR. VANDERLAAN:</p> <p>14 Q. I understand, Doctor, that you may have some</p> <p>15 opinions. But are you offering -- are you going to offer</p> <p>16 any expert opinions as to the two Kalamazoo Department of</p> <p>17 Public Safety officers?</p> <p>18 A. I don't -- I don't put myself out as an expert</p> <p>19 in police procedures. I think it's --</p> <p>20 Q. Okay.</p> <p>21 A. -- very simple to be critical of the people that</p> <p>22 managed Mr. Dunigan, particularly true from the time that</p> <p>23 he was lifted into the wheelchair in the ER lobby,</p> <p>24 transported outside, picked up off the ground, with full</p> <p>25 assist, and then -- and then put into the police car in</p>	<p style="text-align: right;">Page 112</p> <p>1 enough where you saw that the two officers stopped their</p> <p>2 vehicle and checked on Mr. Dunigan?</p> <p>3 A. Yes.</p> <p>4 Q. And my question is: Are you able to say with a</p> <p>5 reasonable degree of medical certainty whether if</p> <p>6 Mr. Dunigan was taken back to the hospital, which I think</p> <p>7 they traveled maybe a minute, if I recall, or so, if</p> <p>8 he -- whether he would have lived? Can you say one way</p> <p>9 or the other?</p> <p>10 A. Difficult to say. I don't -- that's difficult.</p> <p>11 I'm not sure.</p> <p>12 Q. Okay. So I think what I hear you saying is that</p> <p>13 under oath, in front of a jury, you would say, "I can't</p> <p>14 tell you one way or the other if he would have lived. He</p> <p>15 might have, he might not have"?</p> <p>16 A. That's reasonable. Yes.</p> <p>17 MR. VANDERLAAN: All right. Thank you, Doctor.</p> <p>18 That's all I have. Thanks for being so patient.</p> <p>19</p> <p>20 EXAMINATION</p> <p>21 BY MR. HARRINGTON:</p> <p>22 Q. Doctor, I've got a couple of questions in</p> <p>23 follow-up.</p> <p>24 With respect to whether or not he would have</p> <p>25 lived if he was taken back to the hospital, you say you</p>

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<p style="text-align: right;">Page 113</p> <p>1 don't know because that exceeds the scope of your 2 expertise; is that correct?</p> <p>3 A. Yes. As well, I think honestly he -- at the 4 point that they're driving and they make the decision to 5 pull over and look at him, he's not breathing and he 6 doesn't really have evidence of, you know, brain 7 perfusion. He's kind of slumped over and -- and so at 8 that point, had a paramedic been summoned, they showed 9 up, or had they immediately pulled back, lights and 10 sirens, into the ER, would he have been able to survive? 11 That I think is -- you know, that's right on the cusp. I 12 mean, had the police officers started doing CPR and then 13 the paramedics get there and take over, could that 14 patient have survived? You know, I'm just being honest, 15 I think it's difficult to say. It's very difficult to 16 say.</p> <p>17 At that point -- you know, I think at the point 18 where he's voicing words and he's clearly perfusing his 19 brain -- backing up before when he's in the ER lobby or 20 when he's out at the curb, where the audio is not 21 available, I think it's easier to say at that point, more 22 likely than not, he would have survived. I think 23 honestly, it's difficult to say at the point where they 24 pulled over.</p> <p>25 Q. Okay. Appreciating you've testified that you</p>	<p style="text-align: right;">Page 115</p> <p>1 MR. HARRINGTON: That's all I have, Doctor. 2 Thank you. 3 4 FURTHER EXAMINATION 5 BY MR. VANDERLAAN: 6 Q. Doctor, did you say that when the officers 7 pulled over, Mr. Dunigan was not breathing? 8 A. I believe he was -- I believe -- I would have to 9 look at the video again. I think he really had what I 10 would describe as agonal respirations. In other words, 11 prolonged periods of apnea, or not breathing, punctuated 12 by a solitary deep breath. That's usually a perimorbid 13 finding. I'd have to look at the video again. But as I 14 recall, he had had sort of agonal respirations, not 15 breathing, you know, clearly respiratory failure during 16 this time. 17 Q. Did you read the two officers, that would be 18 Nugent and Schaeffer's, deposition testimony? 19 A. No. I have Shoemaker and Cattell, are security 20 officers. I don't have any other officer deposition. 21 Q. The two officers testified that when they pulled 22 over, they pulled over to check to see whether 23 Mr. Dunigan was breathing. And their testimony was that 24 he was still breathing. You don't have any reason one 25 way or the other to dispute that, do you?</p>
<p style="text-align: right;">Page 114</p> <p>1 don't know what Mr. Dunigan's intent was from what you 2 visualized on the video, being really the waiting room, 3 to the time that he's being wheeled out and ultimately 4 outside of the hospital, are you able, though, Doctor, 5 when you watch the video, to tell if Mr. Dunigan is ill, 6 from what you see on video?</p> <p>7 MR. O'LOUGHLIN: Objection. Form. Foundation. 8 THE WITNESS: Yes, he looks ill. He looks 9 obviously ill. 10 BY MR. HARRINGTON: 11 Q. Does he look like he's in need of medical 12 treatment? 13 MR. O'LOUGHLIN: Same objection. 14 THE WITNESS: Absolutely. 15 BY MR. HARRINGTON: 16 Q. Can you explain that in a little bit more 17 detail, as to what you visualized that shows? That 18 Mr. Dunigan was a sick man, from what you saw on video? 19 A. Well, he was -- he was limp and weak, to the 20 point that he was unable to stand. He couldn't engage or 21 verbalize appropriately. You know, if you see that in an 22 emergency room lobby, whether the patient's coming or 23 going, that just screams of need for medical evaluation. 24 So, you know, those are the physical clues that were 25 there.</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Well, I think the video speaks for itself. 2 Again, I don't have it pulled up. I'd be curious to 3 review it again, now speaking about it. But as I recall, 4 they were -- you know, it was clear the patient was not 5 breathing. But I -- again not having the video in front 6 of me, I don't know for sure. 7 Q. Would you agree with me that the officers would 8 be in a much better position to make that determination 9 than we would? Or than you would in looking at the 10 video? 11 A. I don't know if I would agree with that. I 12 mean, you're saying that the officer that was there 13 should be able to better document and assess the 14 patient's breathing than we would be able to see and hear 15 on a video? I'm not sure I -- 16 Q. No. I think what I'm saying, Doctor, is that if 17 the officers -- if the man wasn't breathing, and the 18 officers knew that, and they took him to the jail, they 19 would be guilty of manslaughter, practically. 20 I mean, going in the opposite, they testified he 21 was still breathing, we checked him and we took him to 22 the jail. So, I mean, don't we take the officers at 23 their word, unless we're going to assume that, you know, 24 they wanted to do the guy harm? I mean, barring that, 25 don't we have to take their word for it?</p>

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<p style="text-align: right;">Page 121</p> <p>1 those facts and answer a question about this specific</p> <p>2 guy. So you can understand why I would have a hard time</p> <p>3 with this question; right?</p> <p>4 Q. Okay. And I'm -- you may have, except you</p> <p>5 understand Dr. Rigot had no knowledge that he had missed</p> <p>6 his dialysis that week; true?</p> <p>7 A. Dr. Rigot documents that the patient had had</p> <p>8 dialysis twice that week.</p> <p>9 Q. Correct. So Dr. Rigot did not have any</p> <p>10 knowledge that he missed his dialysis that week; true?</p> <p>11 MR. HARRINGTON: Form. Foundation.</p> <p>12 Speculation.</p> <p>13 THE WITNESS: It is again a little bit</p> <p>14 speculative, just because the note is made after the</p> <p>15 patient's deceased. But I think that the statement that</p> <p>16 Dr. Rigot makes that he had had dialysis twice, that</p> <p>17 seems to have been the information he understood.</p> <p>18 BY MR. O'LOUGHLIN:</p> <p>19 Q. You're right, I forgot to follow up on that too.</p> <p>20 We might be here a little longer, Doctor.</p> <p>21 Are you suggesting Dr. Rigot's note was made</p> <p>22 after the fact and based on some knowledge later</p> <p>23 obtained?</p> <p>24 A. Well, those are two separate questions. One is</p> <p>25 was it made later? Yes, it was. It was made about 12</p>	<p style="text-align: right;">Page 123</p> <p>1 suggesting that Dr. Rigot falsely entered that</p> <p>2 information? In other words, that the patient didn't</p> <p>3 tell him what is noted there?</p> <p>4 A. No, I'm not saying that. I'm saying what's</p> <p>5 documented contemporaneously, which is really by the</p> <p>6 nurse, is that the patient was weak and dizzy. And</p> <p>7 what's documented later, after the patient is deceased,</p> <p>8 is this statement that he had had dialysis twice this</p> <p>9 week. Which I don't know what to say. I'm not accusing</p> <p>10 him of lying. I don't want you to get the wrong idea.</p> <p>11 I'm just pointing out the facts.</p> <p>12 Q. Why? Are you suggesting that's not a credible</p> <p>13 note?</p> <p>14 A. No, I'm not.</p> <p>15 Q. So you find it credible?</p> <p>16 A. Well, it's his note. It's his documentation.</p> <p>17 So that's what he put in the chart. I don't have any</p> <p>18 opinion or -- or -- I don't think he was lying. I have</p> <p>19 no reason to think he was lying or making anything up. I</p> <p>20 certainly would believe that he got that information from</p> <p>21 the patient.</p> <p>22 Q. Okay. Now, is it your opinion that Mr. Dunigan</p> <p>23 presented in the emergency department, and while he was</p> <p>24 in the emergency department, had symptoms so severe that</p> <p>25 one would expect that his life would be in jeopardy, in</p>
<p style="text-align: right;">Page 122</p> <p>1 hours after the patient died. Was Dr. Rigot aware of the</p> <p>2 patient's demise? He testifies no. So I have no reason</p> <p>3 to think that he did know.</p> <p>4 Q. And what is it that tells you it was made 12</p> <p>5 hours later?</p> <p>6 A. There's a timing entry, timing of the note.</p> <p>7 Would you like me to read it to you?</p> <p>8 Q. Please do.</p> <p>9 A. There's the history of present illness, is a big</p> <p>10 fat paragraph that looks like it was put together by the</p> <p>11 scribe. And then there's one more sentence added as a</p> <p>12 separate paragraph below that. That separate sentence is</p> <p>13 written by Dr. Rigot himself. And that says, "Patient</p> <p>14 admitted. Just discharged from Borgess recently. Had</p> <p>15 dialysis twice this week while there. Scheduled dialysis</p> <p>16 tomorrow, Friday." And that documentation there's a</p> <p>17 little footnote on there that says Dr. Rigot made that at</p> <p>18 1.1, which is -- corresponds later to the time. Here you</p> <p>19 can look -- actually back up the page and you can see</p> <p>20 when the entry was made. It says at 7:19 a.m. No, no,</p> <p>21 no. Oh, wait, I'm mixing up two things here. Let's see.</p> <p>22 Well, there's a marker for what 1.1 means. It's probably</p> <p>23 several pages forward. Yeah, it's several pages forward.</p> <p>24 It's at 7:14 p.m. on the 6th.</p> <p>25 Q. All right. Getting back to my point. Are you</p>	<p style="text-align: right;">Page 124</p> <p>1 the absence of treatment?</p> <p>2 A. It's the same question you've asked me several</p> <p>3 times; right?</p> <p>4 Q. It's different. But go ahead.</p> <p>5 MR. HARRINGTON: No, it's the same. Asked and</p> <p>6 answered. Objection.</p> <p>7 THE WITNESS: Do you mind repeating the</p> <p>8 question? I'm sorry to keep doing that to you.</p> <p>9 BY MR. O'LOUGHLIN:</p> <p>10 Q. Is it your opinion that Mr. Dunigan presented</p> <p>11 with symptoms, while he was in the emergency department,</p> <p>12 that were so severe that they would be expected to be</p> <p>13 life-threatening?</p> <p>14 A. Yes. That's why we're here.</p> <p>15 Q. What symptoms? I'm sorry?</p> <p>16 A. He -- he -- I said that's why we're here,</p> <p>17 because he fell because he was weak and dizzy, or not</p> <p>18 right and dizzy, and that's -- those are the symptoms</p> <p>19 that brought him in. So to say those don't exist as part</p> <p>20 of his emergency department care is -- is not reasonable.</p> <p>21 It is part of his ER visit. That's the reason he's</p> <p>22 there.</p> <p>23 Q. There's no place that indicates he complained of</p> <p>24 weakness; true? Or that he had a symptom of weakness?</p> <p>25 A. Technically right. It says, "I lost my balance</p>

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<p style="text-align: right;">Page 125</p> <p>1 and I didn't feel right and I was dizzy." Or there's</p> <p>2 dizziness. So --</p> <p>3 Q. Okay.</p> <p>4 A. Right. It doesn't say weakness specifically.</p> <p>5 Q. And there's no indication that he -- that while</p> <p>6 he was in the emergency department, he lost his balance</p> <p>7 or just didn't feel right; true?</p> <p>8 A. While he was in the ER, as we've talked about,</p> <p>9 they didn't test him. They didn't stand him and walk</p> <p>10 him. So that --</p> <p>11 Q. Do you recall my question?</p> <p>12 A. -- that could not have been documented. So I --</p> <p>13 you and I have talked about this very issue, I thought.</p> <p>14 Q. And I'm talking about exhibit -- symptoms</p> <p>15 exhibited while he was in the emergency department.</p> <p>16 A. Right.</p> <p>17 Q. Is the only one you're aware of that note of</p> <p>18 dizziness?</p> <p>19 A. Right. That -- that critically important</p> <p>20 nursing note is -- is the -- is a big piece, yes.</p> <p>21 Besides that, do I see any other documentation</p> <p>22 that while he was in the ER, he was weak or dizzy or</p> <p>23 lightheaded or passing out? No, I don't see any other</p> <p>24 evidence of that.</p> <p>25 Q. And there's no evidence of any other symptom</p>	<p style="text-align: right;">Page 127</p> <p>1 that they would place his life in jeopardy?</p> <p>2 A. No.</p> <p>3 Q. All right. And the dizziness, as you've</p> <p>4 interpreted it, is an isolated note by the nurse, is that</p> <p>5 a symptom such that one would reasonably expect that if</p> <p>6 it was not treated, his life would be in jeopardy?</p> <p>7 A. The dizziness was -- if the diz- -- the cause of</p> <p>8 the dizziness was not treated, is that a medical</p> <p>9 emergency you're asking?</p> <p>10 Q. I believe my question was: Was the dizziness as</p> <p>11 you've interpreted the record, was that a symptom that</p> <p>12 was so severe that one would expect that in the absence</p> <p>13 of treatment, his life was in jeopardy?</p> <p>14 A. Yes.</p> <p>15 Q. And what was it that -- about that symptom that</p> <p>16 indicated his life was in jeopardy?</p> <p>17 A. He was weak and dizzy, or he's dizzy and not</p> <p>18 right, to the point that he fell and got an injury. And</p> <p>19 that was the warning shot that we have an opportunity to</p> <p>20 diagnose him properly. That was the time.</p> <p>21 Q. And you're not -- other than the note of</p> <p>22 dizziness, is there any indication that he was unstable</p> <p>23 in the emergency department, up to the time he went to</p> <p>24 the waiting room?</p> <p>25 A. Well, there's unstable meaning unstable on his</p>
<p style="text-align: right;">Page 126</p> <p>1 which you believe was so severe that it would be expected</p> <p>2 to be life-threatening?</p> <p>3 A. Other than what we see on the videos, no.</p> <p>4 Q. The videos were taken after he was out, he was</p> <p>5 done being evaluated by the department, and I'm still in</p> <p>6 the department.</p> <p>7 A. Right. Again, you know, just the bird's eye</p> <p>8 view of this is a patient that has fallen, noncompliant</p> <p>9 with dialysis, and -- you know, so to say that he was not</p> <p>10 having symptoms in the ER, before he was sent to the</p> <p>11 lobby, you know, again, this is a little bit of a painful</p> <p>12 theoretical. But yes.</p> <p>13 Q. Okay. I don't know what that answer meant. But</p> <p>14 let me try and get it right.</p> <p>15 The only symptom, according to your review and</p> <p>16 your interpretation of the record, that he exhibited</p> <p>17 while he was in the emergency department were the rib</p> <p>18 pain from the injury and the fall and dizziness; true?</p> <p>19 A. Fair enough. I mean, he talks about hip pain</p> <p>20 and rib pain and flank pain. But yes.</p> <p>21 Q. Okay. Were the rib pain or hip pain or flank</p> <p>22 pain symptoms so severe that one would expect that they</p> <p>23 would place his life in jeopardy?</p> <p>24 A. No. Not necessarily.</p> <p>25 Q. Are they symptoms such that one would expect</p>	<p style="text-align: right;">Page 128</p> <p>1 feet or meaning hemodynamically unstable? Or do you mean</p> <p>2 more in the EMTALA phrase of unstable from his emergency</p> <p>3 medical condition? I just -- I'm sorry. I know I'm</p> <p>4 being difficult, but I'm having a hard time teasing apart</p> <p>5 his history. The whole picture. I can't tease out this,</p> <p>6 well, ignore the nurse -- ignore the fact that the nurse</p> <p>7 said he was dizzy. And ignore the fact that he fell,</p> <p>8 with no explanation. And ignore the fact that they've</p> <p>9 never stood him and walked him. Ignore that and then</p> <p>10 what do you think about Mr. Dunigan and his presentation?</p> <p>11 Because that's very difficult. That's not a reality.</p> <p>12 Q. My question, I believe, was: Other than the</p> <p>13 note of dizziness, is there any evidence that Mr. Dunigan</p> <p>14 was unstable in the emergency department?</p> <p>15 MR. HARRINGTON: Form and foundation.</p> <p>16 THE WITNESS: Yes. Again, I'll say the --</p> <p>17 BY MR. O'LOUGHLIN:</p> <p>18 Q. Go ahead.</p> <p>19 A. I'll say yes, they didn't stand and walk him, so</p> <p>20 they don't know that he was stable. So does the absence</p> <p>21 of testing declare that he is stable? No. The blood</p> <p>22 pressure was low-ish. That was not rechecked. Does that</p> <p>23 mean that he was unstable? I don't know. It wasn't</p> <p>24 rechecked. So I know -- I realize I'm not answering your</p> <p>25 question to your satisfaction, because it's a very</p>

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<p style="text-align: right;">Page 129</p> <p>1 difficult thing you're asking me to answer.</p> <p>2 Q. I'm asking you to answer based on the evidence.</p> <p>3 Not on guesses or what might have been or might have not</p> <p>4 been done.</p> <p>5 MR. HARRINGTON: Don't argue. He is answering.</p> <p>6 BY MR. O'LOUGHLIN:</p> <p>7 Q. Can you point me to -- other than the note of</p> <p>8 dizziness, can you point me to any evidence indicating</p> <p>9 that Mr. Dunigan was unstable in the emergency</p> <p>10 department?</p> <p>11 A. Other than what we've talked about, no.</p> <p>12 Q. No, I want -- I want -- what is it we've talked</p> <p>13 about that you're referring to there?</p> <p>14 A. The -- the absence of road testing. The absence</p> <p>15 of testing and walking. And the low blood pressure, the</p> <p>16 low-ish blood pressure. Is there evidence beyond those</p> <p>17 things? Well, yes. The other evidence is that he missed</p> <p>18 dialysis and he was -- so if you're excluding that</p> <p>19 evidence also, then no, I guess there was no other</p> <p>20 evidence.</p> <p>21 Q. The absence of testing doesn't indicate</p> <p>22 instability, does it?</p> <p>23 A. How do you mean?</p> <p>24 Q. When I ask you -- I just asked you the question</p> <p>25 about evidence of instability, that he was unstable in</p>	<p style="text-align: right;">Page 131</p> <p>1 it's documented that he's noncompliant. But I don't know</p> <p>2 that Dr. Rigot would have known that.</p> <p>3 Q. Could any patient who had a history of being</p> <p>4 noncompliant with dialysis be considered stable after</p> <p>5 presenting to the emergency department with a history of</p> <p>6 a fall?</p> <p>7 A. Yes. As we talked about earlier, there's the</p> <p>8 circumstance where "I stumbled and tripped." I think</p> <p>9 that would be different.</p> <p>10 Q. If the history here was that Mr. Dunigan had</p> <p>11 stumbled and tripped, would he have been able to be</p> <p>12 considered stable as of the time that he was wheeled into</p> <p>13 the waiting room?</p> <p>14 A. I think that's reasonable. I've said that. I</p> <p>15 think that if he had provided the history that he tripped</p> <p>16 and fell, not -- in contrast to what we're seeing, which</p> <p>17 is a nursing note that that is not the circumstance. But</p> <p>18 if in that circumstance, I think had -- was it obligating</p> <p>19 to check his potassium and work him up for that? No.</p> <p>20 Q. In answer to some of Mr. VanderLaan's questions,</p> <p>21 you talked about Mr. Dunigan not being able to verbalize</p> <p>22 appropriately after he was wheeled into the waiting room.</p> <p>23 When did you perceive that occurred?</p> <p>24 A. I don't have audio from that lobby video. I</p> <p>25 think there's audio on the police vehicle, so --</p>
<p style="text-align: right;">Page 130</p> <p>1 the department, and you went into, well, they didn't road</p> <p>2 test him, that he hadn't had dialysis. And those aren't</p> <p>3 things that occurred in the emergency department.</p> <p>4 A. Okay. Fair enough.</p> <p>5 Q. All right. Other than the note of dizziness,</p> <p>6 can you point to any evidence indicating that Mr. Dunigan</p> <p>7 was unstable in the emergency department, using unstable</p> <p>8 in the EMTALA sense?</p> <p>9 MR. HARRINGTON: Objection to form and</p> <p>10 foundation. Asked and answered like six times.</p> <p>11 THE WITNESS: Yes. I would say the other</p> <p>12 evidence is his medical history says that he's</p> <p>13 noncompliant with dialysis; right? And that taken in</p> <p>14 combination with his presenting symptoms of "I fell." I</p> <p>15 would say that that is, in broad terms, suggesting that</p> <p>16 there is an emergency medical condition. So there is</p> <p>17 some evidence despite that note.</p> <p>18 BY MR. O'LOUGHLIN:</p> <p>19 Q. The indication that Mr. Dunigan was noncompliant</p> <p>20 with dialysis had been following him for quite some time,</p> <p>21 had it not?</p> <p>22 A. I'm not sure how long that documentation was in</p> <p>23 there. It doesn't have a time of entry. Some of the</p> <p>24 other diagnoses have times of entry. That one does not.</p> <p>25 But at other hospitals, at Borgess, Borgess Hospital,</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. After he was in -- I'm sorry. After he was in</p> <p>2 the back of the car?</p> <p>3 A. Correct. As he was getting put into the car,</p> <p>4 there's audio.</p> <p>5 Q. Okay. And does that in any way indicate that</p> <p>6 he's unable to verbalize appropriately?</p> <p>7 A. I think I just hear grunting, again. I should</p> <p>8 watch the video again. I think it's mainly grunting and</p> <p>9 nonsensical words.</p> <p>10 Q. Is "take me to jail" a nonsensical word?</p> <p>11 MR. HARRINGTON: Foundation. Form.</p> <p>12 THE WITNESS: No. But I don't remember hearing</p> <p>13 that.</p> <p>14 BY MR. O'LOUGHLIN:</p> <p>15 Q. Is "Can you take these cuffs off" a nonsensical</p> <p>16 phrase?</p> <p>17 A. No.</p> <p>18 Q. Do you recall hearing that while he was in the</p> <p>19 back of the police vehicle?</p> <p>20 A. No, I don't.</p> <p>21 Q. Would that be significant to you?</p> <p>22 A. Not really. I mean, just based on his</p> <p>23 appearance and his inability to, you know, follow</p> <p>24 commands, engage and so on.</p> <p>25 Q. Just so we're clear, you don't know whether he</p>

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<p style="text-align: right;">Page 133</p> <p>1 was unable to follow commands or he was refusing to</p> <p>2 follow commands; right?</p> <p>3 A. Right. I don't know.</p> <p>4 Q. It would be speculation on your part to decide</p> <p>5 which of those was the case?</p> <p>6 A. Correct. I don't know his intent or exactly.</p> <p>7 That's right.</p> <p>8 Q. Okay. Now, based on everything we've talked</p> <p>9 about, if hypothetically EMTALA requires that the</p> <p>10 hospital personnel actually recognize an emergency</p> <p>11 medical condition exists, would you agree that no Bronson</p> <p>12 employee violated EMTALA in this case?</p> <p>13 MR. HARRINGTON: Form. Foundation.</p> <p>14 THE WITNESS: You're saying if they did</p> <p>15 recognize -- wait. Repeat it again, I'm sorry.</p> <p>16 BY MR. O'LOUGHLIN:</p> <p>17 Q. If EMTALA requires that the hospital personnel</p> <p>18 actually recognize an emergency medical condition exists,</p> <p>19 you would agree that Bronson personnel did not violate</p> <p>20 EMTALA in this case?</p> <p>21 A. But that's not --</p> <p>22 MR. HARRINGTON: Same objection.</p> <p>23 THE WITNESS: That's not what EMTALA says. The</p> <p>24 preface to your question is if EMTALA says you have to</p> <p>25 recognize it. That's not what the EMTALA says. It says</p>	<p style="text-align: right;">Page 135</p> <p>1 Q. Thank you. I appreciate it.</p> <p>2 Does that mean the answer to my question is yes,</p> <p>3 you can't say that any Bronson personnel actually</p> <p>4 recognized that Mr. Dunigan had an emergency medical</p> <p>5 condition?</p> <p>6 A. Exactly. They failed to recognize that he had</p> <p>7 an emergency medical condition, yes, we're saying the</p> <p>8 same thing now.</p> <p>9 Q. We are. Except now given that, if you assume</p> <p>10 that EMTALA requires that they actually recognize an</p> <p>11 emergency medical condition, then given that you agree</p> <p>12 that there's no evidence that they did recognize it, they</p> <p>13 did not violate EMTALA?</p> <p>14 MR. HARRINGTON: Form. Foundation. Calls for a</p> <p>15 legal conclusion.</p> <p>16 Doctor, if you know what the courts have ruled</p> <p>17 and how they've interpreted this across the country and</p> <p>18 within this Sixth Circuit, go ahead and answer.</p> <p>19 MR. O'LOUGHLIN: I don't think that requires any</p> <p>20 of that. It just requires him to answer the</p> <p>21 hypothetical.</p> <p>22 MR. HARRINGTON: No. I think it does require</p> <p>23 him to know that. Because you're asking him to -- with</p> <p>24 your constrained hypothetical and saying how the courts</p> <p>25 have interpreted EMTALA, did they violate it? I mean,</p>
<p style="text-align: right;">Page 134</p> <p>1 you have to screen for an emergency medical condition.</p> <p>2 It doesn't say have to recognize it.</p> <p>3 BY MR. O'LOUGHLIN:</p> <p>4 Q. I asked hypothetical -- that's why I asked you</p> <p>5 hypothetically. I don't expect you to know the law. I</p> <p>6 don't expect you to know how courts interpret EMTALA. So</p> <p>7 hypothetically, if EMTALA requires that the hospital</p> <p>8 personnel actually recognize an emergency medical</p> <p>9 condition exists, you would agree that under your</p> <p>10 analysis, Bronson did not violate EMTALA in this case?</p> <p>11 MR. HARRINGTON: Objection to form. Foundation.</p> <p>12 THE WITNESS: I honestly am not sure how to</p> <p>13 answer that question, because you're asking me about a</p> <p>14 theoretical statute.</p> <p>15 MR. HARRINGTON: And you're asking him about a</p> <p>16 legal conclusion. And I don't think that's appropriate.</p> <p>17 BY MR. O'LOUGHLIN:</p> <p>18 Q. Doctor, do you agree that based upon everything</p> <p>19 you've reviewed, you are unable to say that any Bronson</p> <p>20 personnel actually recognized that Mr. Dunigan had an</p> <p>21 emergency medical condition that might be</p> <p>22 life-threatening?</p> <p>23 A. It does appear that the staff of the hospital</p> <p>24 failed to recognize that he had an emergency medical</p> <p>25 condition.</p>	<p style="text-align: right;">Page 136</p> <p>1 that's a question that the court is going to have to</p> <p>2 decide, or the jury. So I don't think it's appropriate</p> <p>3 for this expert to answer that question as phrased. I</p> <p>4 think you need to rephrase it.</p> <p>5 BY MR. O'LOUGHLIN:</p> <p>6 Q. Can you answer the question, Doctor?</p> <p>7 MR. HARRINGTON: Same objection. I don't think</p> <p>8 you can.</p> <p>9 THE WITNESS: I honestly --</p> <p>10 MR. HARRINGTON: Calls for a legal conclusion.</p> <p>11 THE WITNESS: Yeah. As well it's -- you're</p> <p>12 taking this -- you're taking EMTALA and you're carving</p> <p>13 something out of it saying, well, they have to recognize</p> <p>14 that there's a problem. And then in that circumstance,</p> <p>15 where you've already said that they -- they didn't</p> <p>16 recognize that there was an emergency medical condition,</p> <p>17 now is to be applied to the circumstance where EMTALA has</p> <p>18 to -- has to have the person recognize it and they --</p> <p>19 they're saying they failed to recognize it. So I guess I</p> <p>20 have a very difficult time with this -- this question.</p> <p>21 BY MR. O'LOUGHLIN:</p> <p>22 Q. But you do appreciate the difference between</p> <p>23 actually recognizing the correct diagnosis and</p> <p>24 negligently failing to make the diagnosis, don't you?</p> <p>25 A. That's a little blurred.</p>

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<p style="text-align: right;">Page 137</p> <p>1 Q. Let me ask this one: If EMTALA requires that</p> <p>2 hospital personnel have an improper motive for failing to</p> <p>3 recognize and stabilize a patient's emergency medical</p> <p>4 condition, you would agree that you could not say that</p> <p>5 any of the hospital personnel -- or there's evidence that</p> <p>6 any of the hospital personnel had an improper motive;</p> <p>7 true?</p> <p>8 MR. HARRINGTON: Form foundation.</p> <p>9 Go ahead.</p> <p>10 THE WITNESS: I don't think there's any evidence</p> <p>11 that hospital personnel had a malicious approach to this</p> <p>12 gentleman's care.</p> <p>13 Does that answer your question?</p> <p>14 BY MR. O'LOUGHLIN:</p> <p>15 Q. And if that's a required element of EMTALA, then</p> <p>16 you would not be able to say that EMTALA was violated in</p> <p>17 this case; true?</p> <p>18 A. I think you're asking me to answer a legal</p> <p>19 question. I think --</p> <p>20 Q. Well, I'm asking for your --</p> <p>21 A. So --</p> <p>22 Q. I'm asking you for your knowledge, based upon</p> <p>23 your review of the materials and assuming that a required</p> <p>24 element of an EMTALA violation is that the hospital</p> <p>25 personnel did so for an improper motive, such as race,</p>	<p style="text-align: right;">Page 139</p> <p>1 think that's appropriate. I'm going to object to the</p> <p>2 form and foundation of the question.</p> <p>3 BY MR. O'LOUGHLIN:</p> <p>4 Q. You can answer my question.</p> <p>5 MR. HARRINGTON: As long as it doesn't require</p> <p>6 him to do a case law analysis of what the courts</p> <p>7 determined. I don't know that he can.</p> <p>8 MR. O'LOUGHLIN: It was a hypothetical.</p> <p>9 MR. HARRINGTON: You're saying what the courts</p> <p>10 determined. You keep throwing that in there.</p> <p>11 MR. O'LOUGHLIN: No. I'm reading from EMTALA.</p> <p>12 MR. HARRINGTON: Oh, so you're reading from a</p> <p>13 statute or case law interpreting a statute?</p> <p>14 MR. O'LOUGHLIN: No. I'm asking him to assume</p> <p>15 this interpretation and then agree with my conclusion.</p> <p>16 What I'm asking him to assume is that EMTALA is not</p> <p>17 violated unless the hospital personnel actually</p> <p>18 determined that the individual has an emergency medical</p> <p>19 condition.</p> <p>20 BY MR. O'LOUGHLIN:</p> <p>21 Q. Based on that assumption, would you agree that</p> <p>22 EMTALA was not violated in this case?</p> <p>23 MR. HARRINGTON: Doctor, that calls for a legal</p> <p>24 conclusion. If you -- if you know the law well enough to</p> <p>25 answer, go ahead and answer.</p>
<p style="text-align: right;">Page 138</p> <p>1 sex, political views, occupation, education, personal</p> <p>2 prejudice, socioeconomic status or the availability of</p> <p>3 insurance, you would not be able to say that any of those</p> <p>4 were factors in this case?</p> <p>5 A. I don't -- I don't believe that they were</p> <p>6 factors in this case.</p> <p>7 Q. All right. Do you know whether Mr. Dunigan was</p> <p>8 treated any differently than any other paying patient who</p> <p>9 presented with the same symptoms and conditions?</p> <p>10 A. I would like to think that a patient that missed</p> <p>11 his dialysis and is dizzy and falling would have a</p> <p>12 different evaluation, but I don't have any reason to</p> <p>13 believe that they treated Mr. Dunigan differently because</p> <p>14 of his race or insurance, for instance.</p> <p>15 Q. Based upon your review and everything you know</p> <p>16 about this case, did the hospital personnel actually</p> <p>17 determine that Mr. Dunigan had an emergency medical</p> <p>18 condition which could be life-threatening?</p> <p>19 A. It doesn't appear they did.</p> <p>20 Q. And if hypothetically EMTALA says and requires</p> <p>21 that the hospital personnel determine that the individual</p> <p>22 has an emergency medical condition, then the defendants</p> <p>23 didn't violate EMTALA because of that requirement; true?</p> <p>24 MR. HARRINGTON: Counsel, now you're asking the</p> <p>25 same thing again about the legal standards, and I don't</p>	<p style="text-align: right;">Page 140</p> <p>1 THE WITNESS: I can't answer the question as</p> <p>2 thoroughly as he would like me to. But I think that</p> <p>3 the -- the assumption that the hospital has to be aware</p> <p>4 that they're sending somebody out with an emergency</p> <p>5 medical condition, that's not really the intent of that</p> <p>6 statute, I don't think. Just because the hospital is</p> <p>7 unaware of the dangerous condition doesn't absolve them</p> <p>8 of the obligation to look for it or to stabilize it.</p> <p>9 BY MR. O'LOUGHLIN:</p> <p>10 Q. Well, now you are getting into interpreting</p> <p>11 statutes and giving legal conclusions. I'm trying to</p> <p>12 avoid that by asking you to assume that EMTALA requires</p> <p>13 what it says it requires, which is that the hospital</p> <p>14 determine that the individual has an emergency medical</p> <p>15 condition. If that is required for a violation of</p> <p>16 EMTALA, would you agree that these defendants did not</p> <p>17 actually determine that Mr. Dunigan had a -- an emergency</p> <p>18 medical condition, and therefore, did not violate EMTALA?</p> <p>19 MR. HARRINGTON: Counsel, with all due respect,</p> <p>20 we're going round and round. You're asking him about</p> <p>21 making legal conclusions, and then he's trying to give</p> <p>22 you an answer, and then you're trying to say no, I'm</p> <p>23 trying to steer you away from making legal conclusions.</p> <p>24 What do you want this expert to do?</p> <p>25 MR. O'LOUGHLIN: The record speaks for itself.</p>

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<p style="text-align: right;">Page 141</p> <p>1 And please stop the speaking objections.</p> <p>2 MR. HARRINGTON: Well, this is probably the 10th</p> <p>3 or 15th time you've asked him to make a legal conclusion.</p> <p>4 I've remained virtually silent until about the 10th or</p> <p>5 15th time you've asked it.</p> <p>6 MR. O'LOUGHLIN: I'll let the record speak for</p> <p>7 itself.</p> <p>8 Can I have an answer?</p> <p>9 THE WITNESS: I don't know.</p> <p>10 BY MR. O'LOUGHLIN:</p> <p>11 Q. You do know that there's no evidence that anyone</p> <p>12 at the hospital actually determined that Mr. Dunigan had</p> <p>13 an emergency medical condition which could be</p> <p>14 life-threatening; true?</p> <p>15 A. They did not appear -- as I said, they did not</p> <p>16 appear to identify his emergency medical condition.</p> <p>17 MR. O'LOUGHLIN: Thank you, Doctor.</p> <p>18 MR. HARRINGTON: Allan, do you have anything?</p> <p>19 MR. VANDERLAAN: No questions.</p> <p>20 MR. HARRINGTON: I've got a couple.</p> <p>21</p> <p>22 FURTHER EXAMINATION</p> <p>23 BY MR. HARRINGTON:</p> <p>24 Q. Doctor, what are some of the reasons for placing</p> <p>25 somebody in a wheelchair to move them from an emergency</p>	<p style="text-align: right;">Page 143</p> <p>1 assumption to, you know, assume that he was unable to</p> <p>2 walk. I think that's demonstrated fairly quickly in the</p> <p>3 lobby as well.</p> <p>4 BY MR. HARRINGTON:</p> <p>5 Q. More likely than not, Doctor, at the time that</p> <p>6 Mr. Dunigan was being taken out of the emergency</p> <p>7 department examination room to the waiting area, do you</p> <p>8 agree with me that Mr. Dunigan had gait instability?</p> <p>9 MR. O'LOUGHLIN: Form and foundation.</p> <p>10 MR. VANDERLAAN: Join.</p> <p>11 THE WITNESS: More likely than not.</p> <p>12 BY MR. HARRINGTON:</p> <p>13 Q. Doctor, if hospital personnel wanted to have</p> <p>14 people that they considered homeless off of their</p> <p>15 property and would treat them different than, say,</p> <p>16 somebody dressed like you right now, in a sport coat and</p> <p>17 button-down shirt, or me wearing a suit and tie, would</p> <p>18 that be actions for an improper motive?</p> <p>19 MR. O'LOUGHLIN: Form and foundation.</p> <p>20 MR. VANDERLAAN: Join.</p> <p>21 THE WITNESS: I suppose so. I mean, my slanted</p> <p>22 view of that is that I treat everybody the same and I</p> <p>23 expect that other people would do that. But -- so yeah,</p> <p>24 I don't know.</p> <p>25 Did I answer your question?</p>
<p style="text-align: right;">Page 142</p> <p>1 department room to an emergency department waiting area?</p> <p>2 A. What are the reasons? Ease of transport, you</p> <p>3 know, inability to walk.</p> <p>4 Q. Does everybody who leaves an emergency</p> <p>5 department room to the waiting room get transferred into</p> <p>6 a wheelchair?</p> <p>7 A. No.</p> <p>8 Q. The fact that we can see Mr. Dunigan being</p> <p>9 wheeled, and we know that he's coming from the emergency</p> <p>10 department room to the waiting room, is that evidence of</p> <p>11 patient instability?</p> <p>12 MR. O'LOUGHLIN: Form. Foundation.</p> <p>13 THE WITNESS: I guess that's evidence of, you</p> <p>14 know, potentially gait instability.</p> <p>15 BY MR. HARRINGTON:</p> <p>16 Q. And also, Doctor, knowing what we know about the</p> <p>17 entire clinical picture of Mr. Dunigan, the fact that he</p> <p>18 had fallen, there was reported dizziness, and that he is</p> <p>19 being wheeled from the emergency department -- an</p> <p>20 emergency department room, examination room, to the</p> <p>21 waiting area, can we make a reasonable inference that he</p> <p>22 was -- had gait instability?</p> <p>23 MR. O'LOUGHLIN: Form and foundation.</p> <p>24 MR. VANDERLAAN: Join.</p> <p>25 THE WITNESS: I think that's a reasonable</p>	<p style="text-align: right;">Page 144</p> <p>1 MR. HARRINGTON: No.</p> <p>2 BY MR. HARRINGTON:</p> <p>3 Q. What I'm saying, if assuming the hospital wanted</p> <p>4 to have people that they considered homeless off of their</p> <p>5 property, in a different way than, say, people who are</p> <p>6 dressed like you and I today, as I previously described,</p> <p>7 that would be actions for improper motive, would it not?</p> <p>8 MR. O'LOUGHLIN: Form and foundation.</p> <p>9 MR. VANDERLAAN: Join.</p> <p>10 THE WITNESS: Yes.</p> <p>11 BY MR. HARRINGTON:</p> <p>12 Q. Okay. And if a disproportionate amount of</p> <p>13 people that were being removed from, say, a hospital or</p> <p>14 being ticketed for trespassing on the hospital were</p> <p>15 African-American, would that potentially be evidence of</p> <p>16 improper motive?</p> <p>17 MR. O'LOUGHLIN: Form and foundation.</p> <p>18 THE WITNESS: Potentially so.</p> <p>19 MR. HARRINGTON: Okay. That's all I have.</p> <p>20</p> <p>21 FURTHER EXAMINATION</p> <p>22 BY MR. O'LOUGHLIN:</p> <p>23 Q. All right. Doctor, is gait instability the type</p> <p>24 of instability that, in your opinion, EMTALA is talking</p> <p>25 about as an unstable medical condition?</p>

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<p style="text-align: right;">Page 145</p> <p>1 A. No.</p> <p>2 Q. If gait instability was the type of thing EMTALA</p> <p>3 was talking about, would you be able to discharge any</p> <p>4 patient who was a fall risk?</p> <p>5 A. That's a little preposterous. I mean, anybody</p> <p>6 that's had a stroke or is wheelchair bound or paralyzed,</p> <p>7 they couldn't be discharged from the hospital. Is that</p> <p>8 what you're saying, because they don't have stable gait?</p> <p>9 That's a strange hypothetical.</p> <p>10 Q. Okay. So when Mr. Harrington was asking you</p> <p>11 about evidence of gait instability, whether or not</p> <p>12 Mr. Dunigan had gait instability wouldn't constitute an</p> <p>13 unstable medical condition as contemplated by EMTALA,</p> <p>14 with your understanding of EMTALA?</p> <p>15 A. Well, look, I mean, Mr. Dunigan has a cane.</p> <p>16 He's somebody who's functionally ambulatory. So to fail</p> <p>17 to assess that at the time of his discharge, after</p> <p>18 falling and being dizzy, is substandard. So I think that</p> <p>19 the wheelchair then becomes a marker of, well, they</p> <p>20 didn't look. They just wheeled him to the lobby. I</p> <p>21 think that's what he was getting at when he was drilling</p> <p>22 on the wheelchair.</p> <p>23 Q. And do you know if that's the reason they</p> <p>24 wheeled him to the lobby?</p> <p>25 A. No, I don't know.</p>	<p style="text-align: right;">Page 147</p> <p>1 A. I don't know.</p> <p>2 Q. If that did happen, do you know whether the</p> <p>3 hospital would be within its rights in asking a person</p> <p>4 who has no legitimate business purpose there to leave?</p> <p>5 A. It would be -- in this theoretical, it would be</p> <p>6 very strange for the hospital not to ask the patient if</p> <p>7 they have a purpose of being in the hospital or if they</p> <p>8 are there for a medical problem. It would be weird if</p> <p>9 they didn't ask that; right?</p> <p>10 Q. Okay. And if they said "no"?</p> <p>11 A. If they said, "No, I'm here for" -- "to be a</p> <p>12 visitor," or "I'm going to use your bathroom," or "Do you</p> <p>13 have I vending machine?" I don't see any reason that</p> <p>14 that patient would need to be taken in and evaluated.</p> <p>15 Q. And if they had said none of those reasons, but</p> <p>16 they have no -- they're not there for medical help, would</p> <p>17 the hospital be within its right in asking them to vacate</p> <p>18 the premises?</p> <p>19 A. You know, there's too many unknowns in this</p> <p>20 theoretical. "You're not here to use the bathroom.</p> <p>21 You're not hungry. What is it that you need? Are you</p> <p>22 confused? Can you walk?" I think that would probably</p> <p>23 trigger a nurse's involvement, or assessment at least.</p> <p>24 Q. And what if it was none of those things, if the</p> <p>25 person was just there to get out of the outdoors and have</p>
<p style="text-align: right;">Page 146</p> <p>1 Q. And he did get up on his own from the wheelchair</p> <p>2 and move to several different locations within the</p> <p>3 waiting room; true?</p> <p>4 A. True. Although he was very unsteady.</p> <p>5 Q. And you don't know whether that unsteadiness was</p> <p>6 his baseline or whether it was something new; true?</p> <p>7 A. Correct. I don't know that.</p> <p>8 Q. Because you do recognize he had a stroke, had</p> <p>9 hemiparesis and used a cane; correct?</p> <p>10 A. Yes. I'm aware of those facts.</p> <p>11 Q. At the institution where you practice, I assume</p> <p>12 you work in an emergency department?</p> <p>13 A. Yes, sir.</p> <p>14 Q. That emergency department has a waiting room?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Are you aware of occasions where homeless people</p> <p>17 come in and sit in the waiting room?</p> <p>18 A. That they come in from the outside world and sit</p> <p>19 in the lobby, not as a patient being discharged, you're</p> <p>20 asking?</p> <p>21 Q. Correct.</p> <p>22 A. I'm not --</p> <p>23 Q. I mean, not as a patient intending to be seen.</p> <p>24 A. I'm not familiar. I don't know.</p> <p>25 Q. You don't know if that happens?</p>	<p style="text-align: right;">Page 148</p> <p>1 a place to sit?</p> <p>2 A. In this theoretical, it's -- again, you know, I</p> <p>3 live in San Diego, so there's not many times you need to</p> <p>4 come in from outside. But you're saying it was for</p> <p>5 weather or it's not declared, the patient just doesn't</p> <p>6 say?</p> <p>7 Q. Or they say, "I'm waiting for the bus."</p> <p>8 A. Waiting for the bus. There is a bus stop for</p> <p>9 the bus.</p> <p>10 Q. Okay. And you tell them that and they don't</p> <p>11 leave.</p> <p>12 A. Well, it sounds like your patient's confused, so</p> <p>13 I think it would be reasonable to bring them in and make</p> <p>14 some kind of assessment.</p> <p>15 Q. You're not stretching things here, are you,</p> <p>16 Doctor?</p> <p>17 Did the hospital have a right to remove people</p> <p>18 who aren't patients and aren't in the hospital for any</p> <p>19 legitimate purpose from its premises?</p> <p>20 A. Yeah. Hospitals are private property generally.</p> <p>21 But it is a hospital. So when people show up for no</p> <p>22 reason or are confused in the lobby of an emergency</p> <p>23 department, it would stand to reason that the patient</p> <p>24 needs medical assistance. This really, I think, is a --</p> <p>25 Q. I don't --</p>

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<p style="text-align: right;">Page 149</p> <p>1 A. -- broadly different theoretical than the case 2 that you and I are here for today. 3 Q. Did Mr. Dunigan have, based on your review of 4 the evidence, a legitimate reason to remain in the 5 waiting room after the buses started running? 6 A. I don't know. 7 Q. What evidence since you -- well, are you aware 8 of any evidence that he was confused? 9 A. Evidence that he was confused? Not 10 particularly. I mean, it does seem strange that he told 11 somebody he wanted to go to jail. That seems a little 12 odd. But confused outright, like he doesn't know what 13 day of the week it is or he doesn't know why he's there? 14 Not really evidence of that. 15 Q. Or anything like it? 16 A. Okay. 17 Q. I mean, he was determined to be alert and 18 oriented earlier in the department; true? 19 A. Yes. 20 Q. Any other opinions you have regarding this case 21 that we haven't covered? 22 MR. HARRINGTON: Objection to form. Foundation. 23 I don't know what I'm going to ask at trial. 24 THE WITNESS: No, sir. 25 ///</p>	<p style="text-align: right;">Page 151</p> <p style="text-align: center;">REPORTER'S CERTIFICATE</p> <p>1 2 3 4 I, Renée C. Roberts, CSR No. 6910, Certified 5 Shorthand Reporter, certify: 6 That the foregoing proceedings were taken 7 before me at the time and place therein set forth, at 8 which time the witness was put under oath by me; 9 That the testimony of the witness, the 10 questions propounded, and all objections and statements 11 made at the time of the examination were recorded 12 stenographically by me and were thereafter transcribed; 13 That a review of the transcript by the deponent 14 was not requested; 15 That the foregoing is a true and correct 16 transcript of my shorthand notes so taken. 17 I further certify that I am not a relative or 18 employee of any attorney of the parties, nor financially 19 interested in the action. 20 I declare under penalty of perjury under the 21 laws of California that the foregoing is true and 22 correct. 23 Dated this 1st day of March, 2018. 24 25 _____ Renée C. Roberts, CSR No. 6910</p>
<p style="text-align: right;">Page 150</p> <p>1 BY MR. O'LOUGHLIN: 2 Q. Oh, the chest x-ray that you reviewed, was your 3 interpretation different than the radiologist's? 4 A. No. 5 Q. Did that chest x-ray indicate congestive heart 6 failure? 7 A. It showed some mild pulmonary vascular 8 congestion. I don't think particularly worrisome x-ray 9 standalone. 10 Q. It wouldn't -- the x-ray would not indicate an 11 emergency medical condition which would be 12 life-threatening to the patient; correct? 13 A. It does not show evidence of that. 14 MR. O'LOUGHLIN: Thank you, Doctor. 15 MR. HARRINGTON: I'm good. I don't have any 16 questions. 17 THE REPORTER: Are we off the record, Counsel? 18 MR. O'LOUGHLIN: We are. 19 (The deposition concluded at 12:20 p.m.) 20 * * * 21 22 23 24 25</p>	

Exhibit 7



Postmortem Examination Report

James R. Dunigan

WMed Number: W16-326

Date of Birth: 03/24/1959

Date Pronounced Dead: 05/06/2016

Age: 57 years

Sex: Male

Date of Examination: 05/07/2016

Time of Examination: 0800 hours

Procedure: Complete Autopsy

Identification: Identification tags

County: Kalamazoo

Medical Examiner: Elizabeth A. Douglas, MD

Persons in Attendance: Lee Morgan, Autopsy
Assistant; Kalamazoo
County Sheriff's Office
representative

Cause of Death: Hypertensive atherosclerotic cardiovascular disease, diabetes mellitus, chronic obstructive pulmonary disease, and end stage renal disease complicated by acute intoxication by the combined effects of hydrocodone, diphenhydramine, ephedrine, and gabapentin

Department of Pathology

1000 Oakland Drive Kalamazoo, MI 49008-8074

PHONE 269.337.6173 FAX 844.337.6001 WEB med.wmich.edu

Other Conditions: Chronic cocaine use, Fentanyl ingestion

Manner of Death: Accident

Investigative Summary/Comment

The decedent, a 57 year-old male, who had reportedly been discharged from the emergency department following a work-up for flank pain which developed after a fall. He then reportedly refused to leave the hospital, and was transported to the local jail. However, he was unresponsive upon arrival to the jail. Additional details of this investigation are on file with the Kalamazoo County Medical Examiner's Office.

Receipt of Remains

The remains were transported to the morgue by Mike Daniel on Friday, May 06, 2016 at 09:30 hours and assisted into the facility by Sarah Prolo of the Pathology Department.

The remains are received in the supine position contained within a blue plastic transport pouch. A tag attached to the transport pouch bears the name, "Dunigan James". A seal securing the zippers on the transport pouch bears the number "0080885". A tag attached to the right foot bears the decedent's name. A hospital issued identification band is around the left wrist.

External Examination

Clothing and personal effects

The remains are received wearing and with the following:

- Gray and red hooded shirt
- Dark denim jeans
- Multi-colored boxer shorts
- Yellow socks
- Beige athletic shoes
- Brown wallet containing assorted bank cards, identification cards, and papers

Features of identification

The body is that of an African American male, whose appearance is consistent with the reported age of 57 years. The body weighs 171 pounds, including the weight of the personal effects and transport pouch, and is 69 inches in length. The scalp hair is short and dark brown with normal distribution. The facial hair is unshaven. The irides appear brown. The upper teeth are natural and in fair condition. The lower teeth are natural and in fair condition. In addition to these features of identification, multiple blue-black tattoos of the neck, trunk, and extremities including interlocking geometric designs, text, a cross, a flower, and a chain are identified. Multiple linear, ovoid, and irregular scars measuring up to 1-inch in length are present over the upper and lower extremities.

The following scars are also present:

- 3-inch horizontally oriented linear scar of the left antecubital fossa
- 2-1/2 inch horizontally oriented linear scar of the left antecubital fossa
- 3/4-inch x 1 1/2-inch irregular scar of the left knee
- 3/4-inch linear scar of the right supraclavicular chest

Postmortem changes

Rigor mortis is full. Fixed red lividity is over the posterior body surfaces. The skin temperature is cool; the body has been refrigerated. The corneas are clear. The remains are well-preserved in the absence of embalming.

Evidence of therapeutic intervention

- Oral endotracheal tube
- Single lumen intravascular catheter secured with occlusive dressing piercing the skin of the right antecubital fossa
- Four electrocardiogram electrode pads
- Two sets of cardiac defibrillator pads
- Anterior rib fractures in the parasternal line
- Suture closure overlying fistula of the left upper extremity
- Double lumen peripherally inserted central catheter (PICC), right supraclavicular

Postmortem Imaging Studies

Postmortem radiographs are not obtained during the examination.

General

The body habitus is normal. The distribution of body hair is normal for the gender and reported age. There is no evidence of malnutrition or dehydration. No peculiar odors or color changes of the decedent are noted. There are no adherent foreign materials on the body. There are no unusual vascular markings. There is no visible or palpable adenopathy.

Head

The scalp and soft tissues of the face are free of injury. The periorbital, nasal, and facial bones are intact to palpation. The conjunctivae and periorbital regions are pale. The sclerae are anicteric. The pupils are unremarkable. The nasal vestibules are unremarkable. The lips, gums, tongue, and buccal mucosa, where seen, appear free of injury and significant natural disease. The external ears are normally formed and positioned. The mastoid and mandibular regions are unremarkable.

Neck

The neck is of normal configuration; there is no crepitance with manipulation or subcutaneous emphysema. There are no palpable masses of the neck. There is no tracheal deviation.

Torso

The thorax is symmetrical and normal in configuration. The breasts are of normal adult male configuration, and there are no palpable masses. The abdomen is soft. The cervical, supraclavicular, axillary, and inguinal regions are free of palpable adenopathy. The distribution of body hair is appropriate for the reported age. The external genitalia

are of normal male conformation, and there are no external lesions. The perineum and perianal areas are unremarkable. The lower back and buttocks are free of significant abnormalities.

Upper Extremities

The upper extremities are symmetrical and appropriately developed for the reported age. All digits are present.

Lower Extremities

The lower extremities are symmetrical and appropriately developed for the reported age. There is a moderate degree of pitting edema over the feet and distal lower extremities. All digits are present.

Evidence of Injury

There are abraded contusions over the ulnar and volar surfaces of the wrists in addition to a ½-inch red abrasion of the right knee. An approximate 2-inch zone of extravasated blood is in the left anterior chest wall in the midclavicular line, and a 1-inch zone of extravasated blood is in the right anterior chest wall in the midclavicular line.

Internal Examination

Torso

Evisceration/Dissection Method

The organs of the thoracic, abdominal and pelvic cavities are removed using the Virchow technique (individually).

Chest and Abdomen- Walls and Cavities

The body is opened by means of the usual "Y" incision. The subcutaneous fat and musculature are normal and free of injury. The sternum and chest plate are intact. Prior to their removal, the viscera of the thoracic, abdominal and pelvic cavities are examined in situ and occupy their normal sites. The serous surfaces of the right thoracic cavity are adhered to the right lung. The serous surfaces of the left thoracic cavity are adhered to the left lung. There are delicate fibrinous adhesions between loops of bowel. The serous surfaces are otherwise smooth and glistening. No significant fluid accumulations are present in the pericardial sac, pleural cavities or abdominal cavity. There are no abnormal masses present. The diaphragmatic leaves are normally situated. The margins of the liver and spleen are in proper relationship to their costal margins. The weights of the organs are as follows and, unless specified below, show no additional evidence of congenital or acquired disease.

Organ Weights

Heart - 550 grams

Right lung - 1060 grams

Left lung - 820 grams
Spleen - 180 grams
Liver - 2140 grams
Right kidney - 160 grams
Left kidney - 170 grams

Cardiovascular System

Heart:

The heart is enlarged. The coronary arteries have a normal anatomic distribution, and multiple cross sections reveal up to 99% narrowing right coronary artery and 99% narrowing of the first diagonal branch of the left anterior descending coronary artery. The epicardium is smooth and glistening. There is a normal amount of epicardial fat and its distribution is normal. The great vessels enter and leave the heart in a normal manner. The cardiac chambers have a normal configuration. The septa are intact, and there are no congenital abnormalities. The myocardium is of normal consistency and appearance. The left and right ventricles are 2.0 centimeters and 0.3 centimeters thick, respectively. The interventricular septum is 2.0 centimeters thick. The heart valves are thin, pliable, and delicate, and are free of deformity. Valve circumferences are as follows: tricuspid valve = 12 centimeters, pulmonic valve = 8 centimeters, mitral valve = 11 centimeters, and aortic valve = 6 centimeters.

Aorta and its major branches:

There is a moderate degree of atheromatous streaking and plaque formation of the thoracic and abdominal aorta. There is minimal ulceration and calcification of the atheromatous plaques of the infrarenal abdominal aorta.

Venae cavae and their major tributaries:

The superior and inferior venae cavae and their major tributaries are patent throughout. No areas of extrinsic or intrinsic stenosis are present. The deep veins of the lower extremities are dissected and sectioned; no areas of thrombosis are identified.

Respiratory System

The major bronchi have a normal caliber and are free of obstruction. The right and left lungs have a normal lobar configuration. The visceral pleura is adhered to the chest wall and is mottled severely with black streaks and macules. There are subpleural emphysematous bullae. The distal segmental pulmonary arteries are occupied by thromboemboli. The lungs are sub-crepitant throughout. The parenchyma is congested and emphysematous.

Digestive System

The distal esophagus is erythematous; the esophagus is otherwise free of lesions. The stomach has a normal configuration. The serosa is smooth and

glistening. The wall is of normal thickness and the mucosa is thrown into rugal folds. There are pinpoint areas of mucosal ulceration. The stomach contains 300 cc of semisolid and partially chewed material suspended in brown liquid. The duodenum is free of ulceration and other intrinsic lesions. The remainder of the small bowel, the colon, and the rectum are normal in appearance. The appendix is present and is unremarkable.

Hepatobiliary System and Pancreas

Liver:

The capsule is smooth and glistening. The liver configuration is normal. Multiple cross sections through the liver reveal a normal parenchyma.

Gallbladder:

The gallbladder is of normal size and configuration. The wall is thin and the mucosa is bile-stained. It contains approximately 20 mL of bile. No calculi are present.

Pancreas:

The pancreas is firm. Multiple cross sections through the pancreas reveal a moderate degree of fibrosis. The main pancreatic duct is probe patent.

Reticuloendothelial System

The spleen has a normal configuration. The capsule is blue-gray and smooth, without areas of thickening. On section, the splenic pulp is of normal consistency and appearance. No abnormal lymph nodes are encountered. Lymph nodes of the mediastinal, and abdominal areas appear normal. There is moderate anthracosis of the pulmonary hilar lymph nodes. Where bone marrow is seen, it is unremarkable. The thymus is involute.

Urogenital System

Kidneys and Ureters:

The right and left kidneys are similar. The capsules strip with minor difficulty to reveal granular subcapsular surfaces. On section, the renal cortices are attenuated and the cortico-medullary demarcations are distinct. The pelvo-calyceal systems are normal in appearance. The ureters are unremarkable.

Bladder:

The bladder is of normal configuration. The mucosa is intact and free of ulcerations or other lesions. It contains 50 mL of clear, straw-colored urine.

Prostate and seminal vesicles:

Multiple cross sections through the prostate reveal rubbery, firm, gray-white parenchyma, free of lesions. The seminal vesicles are unremarkable.

Testes:

The testes are both present within the scrotal sac. The tunica vaginalis of the right teste contains clear, serous fluid. Bivalve sections of the testes show a normal parenchyma.

Endocrine Organs

No abnormalities are present in the thyroid or adrenal glands. The pituitary gland is mildly enlarged.

Head and Brain:

The scalp is reflected using the standard intermastoidal incision. The cranial contents are examined in situ as the calvarium is removed and as the dura is reflected.

Weight: 1250 grams

The scalp shows no evidence of contusions or galeal hemorrhages. The skull is intact. The dura is smooth and glistening. There are no subdural blood accumulations. The convexities of the cerebral hemispheres are symmetrical. The leptomeninges are thin and transparent. The subarachnoid space does not contain any hemorrhage. The cerebrum presents normal convolutions, with no flattening of the gyri or deepening or widening of the sulci. There is no evidence of subfalcial, uncal, or cerebellar tonsillar herniation present. The major cerebral arteries show mild atherosclerosis, most prominently at the branch points of the circle of Willis. There are no congenital anomalies of the cerebral arteries. The roots of the cranial nerves are unremarkable. Serial coronal sections through the cerebral hemispheres show a remote infarct in the right basal ganglia, but an otherwise grossly normal cortical ribbon and underlying white matter. Serial cross sections through the brainstem and sagittal sections through the cerebellum fail to show any gross lesions or abnormalities. The ventricular system is symmetrical and of normal size and configuration. After removal of the brain, the base of the skull does not demonstrate any fractures.

Neck and Pharynx:

The skin of the neck is dissected up to the angle of the mandible. There is no evidence of soft tissue trauma to the major airways or vital structures of the lateral neck compartments. A layered dissection of the anterior strap muscles of the neck does not disclose injury. The neck organs are excised en bloc and examined separately. The larynx and trachea have a normal caliber and are free of obstruction. The laryngeal and tracheal mucosa is soft and free of lesions. The paravertebral musculature is unremarkable. The cervical spine, hyoid bone, and tracheal cartilage are intact.

Musculoskeletal:

The axial and appendicular skeleton shows no abnormalities. The exposed musculature is unremarkable. The anterior cervical spine and atlanto-occipital joint are stable to manipulation.

Spinal Cord:

Serial cross sections through a small portion of the proximal cervical spinal cord show no gross abnormalities.

Other Procedures

1. Photographs for identification and documentation purposes are obtained.
2. Tissue samples are retained in formalin.
3. Tissue samples are placed in cassettes for processing to slides for microscopic examination.
4. Blood is submitted for a postmortem drug screen.
5. Urine is submitted for a postmortem drug screen.
6. Vitreous fluid is obtained for analysis, if indicated.
7. Fingerprints are obtained and are retained in this office.
8. Blood is placed on a DNA card and is retained for analysis, if indicated.

Slide Block Index

- A- Representative section, right lung
- B- Representative section, left lung
- C- Representative sections, left and right ventricular myocardium, first diagonal branch of the left anterior descending coronary artery
- D- Representative sections, interventricular septum and right coronary artery
- E- Representative sections, right kidney and liver
- F- Representative section, left kidney
- G- Representative section, right hippocampus and cerebellum
- H- Representative sections, left hippocampus and cerebellum

Microscopic Descriptions**Heart**

- Myocyte hypertrophy
- Interstitial and subendocardial fibrosis
- Intramyocardial arteriolosclerosis

Right coronary artery

- Severe atherosclerotic plaque formation characterized by intimal fibrosis, calcific deposits, cholesterol cleft formation, and mild chronic inflammation

First diagonal branch of the left anterior descending coronary artery

- Tangential section through vessel wall showing atherosclerotic plaque formation characterized by intimal fibrosis, calcific deposits, cholesterol cleft formation, and mild chronic inflammation

Lungs

- Enlarged alveoli separated by thin septa and loss of attachments of the alveoli to the outer walls of small airways with concomitant expansion of airspaces
- Vascular congestion
- Intra-alveolar pigment laden macrophages
- Diffuse extravasation of blood within alveolar spaces
- Rare paravascular multinucleated cells with polarizable debris within cytoplasmic space
- Formalin pigment artifact
- Organizing embolus, right lung

Liver

- Periportal clusters of modestly dilated and angulated bile ducts containing intraluminal bile in fibrous stroma without significant atypia or inflammation.
- Moderate degree of chronic, portal-based inflammatory cell infiltrates

Kidneys

- Scattered foci of polarizable debris
- Occasional focus of irregular, coarse basophilic deposits
- Hyaline tubular debris
- Chronic interstitial inflammatory cell infiltrates
- Nodular glomerulosclerosis
- Arteriolonephrosclerosis

Central Nervous System

- Hyaline arteriopathy, penetrating vessels of the cerebrum
- Vascular congestion



Examination and Investigative Findings

- I. Hypertensive atherosclerotic cardiovascular disease
 - a) Cerebral atherosclerosis, mild
 - i) Remote cerebral vascular accident
 - b) Hypertensive cardiovascular disease (clinical history)
 - i) Cardiomegaly
 - ii) Left ventricular hypertrophy
 - iii) Light microscopic changes consistent with essential hypertension
 - (1) Replacement fibrosis of the ventricular myocardium
 - (2) Intramyocardial arteriolosclerosis
 - (3) Myocyte hypertrophy
 - (4) Hyaline arteriopathy of the penetrating vessels of the cerebrum
 - (5) Arteriolonephrosclerosis
 - c) Coronary artery atherosclerosis
 - i) Acute coronary syndrome (clinical history, circa 07/2014)
 - ii) 99% narrowing, right coronary artery
 - iii) 99% narrowing, first diagonal branch of the left anterior descending coronary artery
 - d) Congestive heart failure (clinical) with pitting pedal edema
 - e) Aortic atherosclerosis
- II. Diabetes mellitus, by clinical history
 - a) Nodular glomerulosclerosis
 - b) Postmortem vitreous glucose 14 mg/dL
 - c) Volatiles not detected
- III. Chronic kidney disease, by history
 - a) Hemodialysis, three times weekly (clinical history)
 - b) Date of last hemodialysis unknown

- c) Arteriovenous fistula, left upper extremity
- d) PICC line, right subclavian
- e) Postmortem vitreous electrolytes
 - i) Sodium- 145 mmol/L
 - ii) Potassium- 10.3 mmol/L
 - iii) Chloride- 115 mmol/L
 - iv) Glucose- 14 mg/dL
 - v) Urea nitrogen- 52 mg/dL
 - vi) Creatinine- 3.3 mg/dL

IV. Chronic tobacco exposure

- a) Eleven pack year smoking history (clinical)
- b) Mottling of the pulmonary visceral pleura
- c) Anthracotic hilar lymph nodes
- d) Intra-alveolar pigment laden macrophages
- e) Pulmonary emphysema

V. Mixed drug intoxication

- a) Pulmonary edema
- b) Obtundation and diminished respiratory drive observed in video obtained from police vehicle used to transport decedent from hospital to jail
- c) Femoral blood
 - i) Ephedrine- 141 ng/mL
 - ii) Benzoylecgonine- 1146 ng/mL
 - iii) Hydrocodone- 50.2 ng/mL
 - iv) Gabapentin- 9.8 mcg/mL
 - v) Diphenhydramine- 346 ng/mL
- d) Urine drug screen positive for:
 - i) Benzoylecgonine
 - ii) Fentanyl
 - iii) Norfentanyl
 - iv) Hydrocodone
 - v) Hydromorphone

- e) Postmortem vitreous fluid negative for volatiles
- f) Query of Michigan Automated Prescription System performed 07/05/2016 did not return a record of a hydrocodone prescription in the decedent's name
- g) Review of emergency department records from decedent's last visit does not disclose hydrocodone administration

VI. Chronic cocaine use

- a) Weekly cocaine use, clinical history
- b) Urine and femoral blood positive for cocaine metabolites
- c) Date of last hemodialysis run unknown

VII. Fentanyl ingestion

- a) Urine positive for fentanyl and fentanyl metabolite
- b) Query of Michigan Automated Prescription System performed 07/05/2016 did not return a record of a fentanyl prescription in the decedent's name
- c) Review of emergency department records from decedent's last visit does not disclose fentanyl administration

VIII. Subsegmental right lower lobe pulmonary embolus

IX. Pancreatic fibrosis

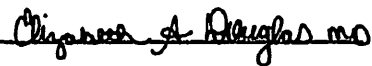
X. Chronic Hepatitis C

XI. Right testicular hydrocele

XII. Bile duct hamartoma

XIII. Abrasions and contusions of the wrists

XIV. Soft tissue hemorrhage, anterior chest wall



Elizabeth A. Douglas, M.D.

July 5, 2016

Exhibit 8

In the Matter Of:

DUNIGAN vs BRONSON METHODIST HOSPITAL, ET AL.

WERNER SPITZ, M.D.

March 20, 2018

Prepared for you by



Bingham Farms/Southfield • Grand Rapids
Ann Arbor • Detroit • Flint • Jackson • Lansing • Mt. Clemens • Saginaw • Troy

SPITZ, M.D., WERNER
03/20/2018

Pages 1–4

<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT</p> <p>2 WESTERN DISTRICT OF MICHIGAN</p> <p>3 SOUTHERN DIVISION</p> <p>4</p> <p>5 GORDA DUNIGAN, as Personal</p> <p>6 Representative for the ESTATE OF</p> <p>7 JAMES DUNIGAN, Deceased,</p> <p>8 Plaintiff,</p> <p>9 vs. Case No.1:16-CV-01324</p> <p>10 Hon. Ellen S. Carmody</p> <p>11 BRONSON METHODIST HOSPITAL,</p> <p>12 Defendant,</p> <p>13 and</p> <p>14 GORDA DUNIGAN, as Personal</p> <p>15 Representative of the ESTATE OF</p> <p>16 JAMES DUNIGAN, Deceased,</p> <p>17 Plaintiff,</p> <p>18 vs. Case No. 1:16-CV-01325</p> <p>19 DEREK NUGENT, et al, Hon. Ellen S. Carmody</p> <p>20 Defendants.</p> <p>21 /</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 JOHN C. O'LOUGHLIN</p> <p>2 Smith, Haughey, Rice & Roegge, P.C.</p> <p>3 100 Monroe Center Street, NW</p> <p>4 Grand Rapids, Michigan 49503</p> <p>5 (616) 774-8000</p> <p>6 joloughlin@shrr.com</p> <p>7 Appearing (Telephonically) on behalf of the</p> <p>8 Defendant, Bronson Methodist Hospital.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 The Deposition of WERNER SPITZ, M.D., F.C.A.P.,</p> <p>2 Taken at 23001 Greater Mack Avenue,</p> <p>3 St. Clair Shores, Michigan,</p> <p>4 Commencing at 2:17 p.m.,</p> <p>5 Tuesday, March 20, 2018,</p> <p>6 Before Linda S. Wilson, CSR-0973.</p> <p>7</p> <p>8 APPEARANCES:</p> <p>9</p> <p>10 DONALD H. DAWSON, JR.</p> <p>11 Fieger, Fieger, Kenney & Harrington</p> <p>12 19390 West Ten Mile Road</p> <p>13 Southfield, Michigan 48075</p> <p>14 (248) 355-5555</p> <p>15 d.dawson@fiegerlaw.com</p> <p>16 Appearing on behalf of the Plaintiff.</p> <p>17</p> <p>18 ALLAN C. VANDER LAAN</p> <p>19 Cummings, McClorey, Davis & Aho, P.L.C.</p> <p>20 2851 Charlevoix Drive, SE, Suite 327</p> <p>21 Grand Rapids, Michigan 49546</p> <p>22 (616) 975-7470</p> <p>23 avanderlaan@cnda-law.com</p> <p>24 Appearing (Telephonically) on behalf of the</p> <p>25 Defendants, Nugent, et al.</p>	<p style="text-align: right;">Page 4</p> <p>1 INDEX TO EXAMINATIONS</p> <p>2</p> <p>3 Witness Page</p> <p>4 WERNER SPITZ, M.D. F.C.A.P.</p> <p>5</p> <p>6 EXAMINATION 5</p> <p>7 BY MR. O'LOUGHLIN:</p> <p>8 EXAMINATION 81</p> <p>9 BY MR. VANDERLAAN:</p> <p>10 EXAMINATION 85</p> <p>11 BY MR. DAWSON:</p> <p>12 RE-EXAMINATION 86</p> <p>13 BY MR. O'LOUGHLIN:</p> <p>14</p> <p>15 INDEX TO EXHIBITS</p> <p>16</p> <p>17 Exhibit Page</p> <p>18 (Exhibit attached to transcript.)</p> <p>19</p> <p>20 DEPOSITION EXHIBIT 1 21</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 5</p> <p>1 St. Clair Shores, Michigan 2 Tuesday, March 20, 2018 3 2:17 p.m. 4 5 WERNER SPITZ, M.D., F.C.A.P., 6 was thereupon called as a witness herein, and after 7 having first been duly sworn to testify to the truth, 8 the whole truth and nothing but the truth, was 9 examined and testified as follows: 10 MR. O'LOUGHLIN: The record should reflect 11 that this is the deposition of Dr. Werner Spitz being 12 taken for all purposes allowed under the Federal Court 13 Rules and the Federal Rules of Procedure. 14 Did somebody else just join the call, or 15 did I hear that wrong? Okay. Never mind. 16 EXAMINATION 17 BY MR. O'LOUGHLIN: 18 Q. Would you state your name, please? 19 A. Werner Spitz, S like Sam, P like Paul, I, T like Tom, 20 Z like zebra. 21 MR. O'LOUGHLIN: I didn't ask. Who is 22 there for the Plaintiff's Counsel? 23 MR. DAWSON: I'm here. Don Dawson on 24 behalf of Harrington. He couldn't make it. 25</p>	<p style="text-align: right;">Page 7</p> <p>1 the Fieger law firm? 2 A. Well, nowhere near the total of course, but I really 3 don't know. I have testified for the Fieger firm, and 4 I have also testified against the Fieger firm. So I 5 couldn't say. I don't really know. I have testified 6 a lot of times for and a fair number of times against 7 the Fieger firm. 8 Q. Have you testified for the Fieger firm more than 100 9 times? 10 A. I doubt that, but maybe 50. 11 Q. The fee scheduled we were provided in this case 12 indicates that before being listed as an expert you 13 require a \$4,000 retainer; is that correct? 14 A. Yes, that is correct. 15 Q. In those 50 or so cases in which you have reviewed 16 cases for the Fieger firm, did you receive that \$4,000 17 retainer? 18 A. Oh, yes. 19 Q. For this deposition you required us, the Defendants, 20 to prepay \$2,500? 21 A. Yes. I have received the usual fee of \$2,500 for this 22 deposition. 23 Q. Does that limit us to any particular time or apply to 24 any particular amount of time? 25 A. Well, it limits you to three hours.</p>
<p style="text-align: right;">Page 6</p> <p>1 BY MR. O'LOUGHLIN: 2 Q. And Doctor, what is your profession? 3 A. I'm a medical doctor, and I'm a forensic pathologist. 4 Q. You have been listed as an expert for the Plaintiff in 5 this case, and I have a report from you that is dated 6 April 15th, 2017. Do you have that report available 7 to you? 8 A. Yes, indeed, I do. 9 Q. Can you estimate for me the numbers of times you have 10 acted as an expert reviewer or witness in a legal 11 case? 12 A. Oh my God. I don't know. Many times. Over maybe 13 2,000 or 3,000. I have been doing this work -- I have 14 been a forensic pathologist for the last 64 years. 15 Q. Your date of birth is March 24th, 1959? 16 A. I wish it was. 17 Q. I'm sorry. I'm sorry. I was looking at the -- that 18 is very bad. Your date of birth is August 22, 1926? 19 A. You are correct. 20 Q. Making you 91 years old? 21 A. That's correct. 22 Q. Do you continue to actively practice? 23 A. Yes. 24 Q. Of the 2,000 to 3,000 cases which you have acted as an 25 expert reviewer or witness, how many of those were for</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. I didn't see that in the fee schedule, but that 2 shouldn't be a problem. 3 A. Okay. 4 Q. If we only take a half hour, do we get a refund? 5 A. No, you don't. It says on the invoice that the fee is 6 not refundable. 7 Q. What amount of income do you derive from acting as an 8 expert reviewer or witness per year? 9 A. Well, this is my profession. All my professional 10 income comes from my work as a forensic pathologist. 11 That involves review, and it involves testimony when 12 it happens. Many times it doesn't happen. I have 13 additional income, but that is from investments. 14 Q. I'm just asking about the amount of income from your 15 expert work either as a reviewer or witness in 16 medical-legal cases. 17 A. You mean you want an amount? 18 Q. Yes, please. 19 A. No, I cannot give you that. The reason that I cannot 20 give it to you is because my work -- my professional 21 work is jointly accomplished with my wife, and my wife 22 is adamant about not releasing that amount. 23 Q. All right. We will reserve that for the judge at the 24 time of trial. How much would you have to be paid to 25 dance naked on the table?</p>

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<p style="text-align: right;">Page 9</p> <p>1 A. I don't understand.</p> <p>2 Q. Have you in the past testified that if you are paid</p> <p>3 enough, you will dance naked on the table?</p> <p>4 A. Well, you know, that was a stupid statement that I</p> <p>5 made, but I was aggravated by the lawyer who was</p> <p>6 questioning me incessantly, but the main --</p> <p>7 unnecessarily. The main comment that I have to make</p> <p>8 now about that comment that I made is that I have</p> <p>9 never had an offer. So yes, I made the statement, but</p> <p>10 I have never had anybody wanting to take me up on it.</p> <p>11 Q. We don't know your price.</p> <p>12 A. Well, I'm pretty cheap.</p> <p>13 Q. All right, Doctor. Going to your report of April</p> <p>14 15th, 2017 in this case, you initially list the</p> <p>15 material you have reviewed. Do you have that in front</p> <p>16 of you?</p> <p>17 A. Yes.</p> <p>18 Q. Is that a list of all of the material you have</p> <p>19 reviewed regarding this case?</p> <p>20 A. No. There was some additional materials that I</p> <p>21 received just a couple -- in fact, one of them I</p> <p>22 received a big, fat envelope just yesterday. But most</p> <p>23 of the material I received before I wrote this report.</p> <p>24 Q. All right. I will try and break it down. As of the</p> <p>25 time you wrote this report are the items listed all of</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Yes, I do.</p> <p>2 Q. Did you review the deposition testimony of Dr. Stark?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Pardon me?</p> <p>5 A. Yes, I do have that deposition.</p> <p>6 Q. Okay. We are talking deposition transcripts, not</p> <p>7 their written report? Although those were referred to</p> <p>8 and may have been included with the transcripts, you</p> <p>9 actually reviewed their deposition testimony in this</p> <p>10 case?</p> <p>11 A. Yes, I did.</p> <p>12 Q. What else have you reviewed since April 15th, 2017?</p> <p>13 A. Well, like I said, Dr. Levine that I received</p> <p>14 yesterday, Dr. Levine, Dr. Landers, Dr. Stark, and</p> <p>15 there is another one. I forgot which one that is.</p> <p>16 Q. The pharmacologist, whatever he was,</p> <p>17 psychopharmacologist?</p> <p>18 A. Yes. He has, I think, a Greek name. Komesaroff.</p> <p>19 Q. Okay. He has not yet been deposed, but you may have</p> <p>20 his report?</p> <p>21 A. I think I have his report, and I thought I had a</p> <p>22 deposition.</p> <p>23 Q. Well, if you do, I wasn't there.</p> <p>24 A. Maybe I don't have that. But I do know that I</p> <p>25 reviewed something that is about a half inch or so in</p>
<p style="text-align: right;">Page 10</p> <p>1 the materials you have reviewed related to this case?</p> <p>2 A. No. All the material that I listed on the front page</p> <p>3 of the report were reviewed and used to write this</p> <p>4 report. There were additional materials which came in</p> <p>5 as late as yesterday.</p> <p>6 Q. Correct. I may not have been clear in my question. I</p> <p>7 was trying to go back to the time you wrote this</p> <p>8 report and asking if at that time the materials listed</p> <p>9 here were all the materials you had related to this</p> <p>10 case.</p> <p>11 A. Yes, that's correct. I did have all the materials</p> <p>12 listed that I reviewed available to me when I wrote</p> <p>13 this report.</p> <p>14 Q. Did you have anything other than those materials</p> <p>15 available to you when you wrote this report?</p> <p>16 A. No.</p> <p>17 Q. Can you identify what material you have received since</p> <p>18 April 15th, 2017?</p> <p>19 A. There were expert opinions, expert depositions,</p> <p>20 including, those that I remember offhand without</p> <p>21 searching, Dr. Levine in San Diego, Dr. Landers, and</p> <p>22 there were some others. There were at least two</p> <p>23 others. Do you want me to go look for them?</p> <p>24 Q. Do you have with you today everything that you have</p> <p>25 reviewed related to this case?</p>	<p style="text-align: right;">Page 12</p> <p>1 thickness given by Dr. Komesaroff. He is a professor</p> <p>2 at a college as far as I know, or a university.</p> <p>3 Q. What else have you reviewed? What other depositions</p> <p>4 have you received?</p> <p>5 A. I received the deposition of Dr. Levine, of Dr. Stark,</p> <p>6 of Dr. Landers. Those are all depositions that I</p> <p>7 received yesterday.</p> <p>8 Q. Have you ever reviewed the depositions of any of the</p> <p>9 healthcare providers involved in Mr. Dunigan's</p> <p>10 Emergency Department visit of May 6th, 2016?</p> <p>11 A. Yes, I did. I don't recall all their names, but I</p> <p>12 remember one, Shoemaker, and if you mention another</p> <p>13 one, then I will know whether I reviewed this</p> <p>14 gentleman's as well.</p> <p>15 Q. Mr. Shoemaker, I believe, was a security officer at</p> <p>16 Bronson. Was the other deposition you reviewed of</p> <p>17 another security officer?</p> <p>18 A. Yes. I forget his name.</p> <p>19 Q. Did you review depositions of any of the actual</p> <p>20 healthcare providers from Bronson, emergency room</p> <p>21 physician?</p> <p>22 A. Yes.</p> <p>23 Q. Nurses, medical assistants?</p> <p>24 A. Yes. There is a physician. I forgot his name. Let</p> <p>25 me see. I don't find it here. I would have to go and</p>

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<p style="text-align: right;">Page 13</p> <p>1 get it and then tell you. If you want me to do that,</p> <p>2 I will do that.</p> <p>3 Q. I really would like to know what it is you have had</p> <p>4 access to for --</p> <p>5 A. Let me go and look at what that is.</p> <p>6 Q. Please bring back all of the depositions you have</p> <p>7 reviewed --</p> <p>8 A. Okay.</p> <p>9 Q. -- and any other material.</p> <p>10 A. Okay.</p> <p>11 (Recess taken at 2:33 p.m.)</p> <p>12 (Back on the record at 2:35 p.m.)</p> <p>13 A. Gorda Dunigan.</p> <p>14 BY MR. O'LOUGHLIN:</p> <p>15 Q. Doctor, just so the record is clear, you are now</p> <p>16 listing the names of witness' depositions you have</p> <p>17 read?</p> <p>18 A. Yes. Dr. Simpson. That is a doctor of education,</p> <p>19 Dr. Dennis Simpson, Nolan Cattell. I already</p> <p>20 mentioned Charles Shoemaker.</p> <p>21 Q. You did.</p> <p>22 A. I think I already mentioned Gorda Dunigan.</p> <p>23 Q. Yes, you did.</p> <p>24 A. Dr. Stark, Dr. Landers, Dr. Levine. I think that is</p> <p>25 all. That's all the depositions. There are other</p>	<p style="text-align: right;">Page 15</p> <p>1 minute. These are statements made by Officer Shaffer</p> <p>2 and Derek Nugent. Ernst, that is E-R-N-S-T, R. Von</p> <p>3 Schwarz, M.D., Ph.D. -- M.D. Ph.D. Von Schwarz,</p> <p>4 S-C-H-W-A-R-Z. There are a number of e-mails. Do you</p> <p>5 want those too, or do you want me to clear that with</p> <p>6 Counsel?</p> <p>7 Q. Is there anything in those e-mails that you relied on</p> <p>8 to form your opinions?</p> <p>9 A. No. I didn't rely on that. But those are e-mails</p> <p>10 regarding scheduling and stuff like that with the</p> <p>11 Fieger firm.</p> <p>12 Q. No, I don't need those.</p> <p>13 A. And those are secretarial -- they were not even</p> <p>14 addressed to me. They are secretaries to secretaries.</p> <p>15 There is one document here that is entitled Notice to</p> <p>16 Produce Documents.</p> <p>17 Q. What document does it refer to?</p> <p>18 A. Let me see. Records, diaries and bills prepared in</p> <p>19 connection with this investigation and evaluation of</p> <p>20 the issues involved in this lawsuit.</p> <p>21 Q. Is that a notice for this deposition to ask you to</p> <p>22 produce those things?</p> <p>23 A. Let me see. Well, the witness is not described here,</p> <p>24 so I don't know if it is to me or not. There are</p> <p>25 statements here. Allen VanderLaan, Kurt Benson,</p>
<p style="text-align: right;">Page 14</p> <p>1 documents.</p> <p>2 Q. And I appreciate you doing that. Sorry it took as</p> <p>3 long as it did. What other documents have you</p> <p>4 reviewed since the material you listed on April 15th,</p> <p>5 2017?</p> <p>6 A. I have reviewed -- wait a minute. No, I'm sorry.</p> <p>7 That is not all the depositions. There are other</p> <p>8 depositions as well, only they are packaged a little</p> <p>9 differently, and so I did not think that they were --</p> <p>10 I did not remember that they were depositions. But</p> <p>11 there are two big binders with depositions. Those</p> <p>12 contain Dr. Regot, deposition of Kevin Patel,</p> <p>13 deposition of Ryan Szumski, that is S-Z-U-M-S-K-I,</p> <p>14 deposition of Marianne Loudes, L-O-U-D-E-S, deposition</p> <p>15 of Kimberly Gilbert, Shay, S-H-A-Y, deposition of</p> <p>16 Brian Blair, deposition of Dennis Watson, deposition</p> <p>17 of Amber Bishop, deposition of Christine Rohr,</p> <p>18 R-O-H-R, Antoura Farrell Dunigan, Farrell is</p> <p>19 F-A-R-R-E-L-L, deposition of Lola Streeter, that's</p> <p>20 S-T-R-E-E-T-E-R, deposition of Steven Dunigan,</p> <p>21 deposition of Quincy Lamar Dunigan, a deposition of</p> <p>22 Detective Eric Shaffer, S-H-A-F-F-E-R, deposition of</p> <p>23 officer Derek Nugent, N-U-G-E-N-T.</p> <p>24 I think I have gotten to the end. Yes.</p> <p>25 Oh, you wanted all of the documents. So hold on a</p>	<p style="text-align: right;">Page 16</p> <p>1 Cummings, McClorey, Davis and Acho. That's it.</p> <p>2 Q. All right. That appears to be perhaps either a</p> <p>3 Request for Production to the Plaintiff or from the</p> <p>4 Plaintiff to the Defendant, so I don't need that</p> <p>5 either.</p> <p>6 A. Okay.</p> <p>7 Q. I'm looking for any other material you have reviewed</p> <p>8 related to this case.</p> <p>9 A. I will tell you. I have the Complaint. There is a</p> <p>10 Complaint to each of the Defendants. So then there is</p> <p>11 a document here, a discharge note from the ER. It</p> <p>12 doesn't say from whom this is, but that is somebody in</p> <p>13 the emergency room that discharged this patient. It's</p> <p>14 a discharge note suffice it to say. I don't know by</p> <p>15 whom.</p> <p>16 Q. Is it discharge instructions?</p> <p>17 A. No, it's not discharge instructions. It describes --</p> <p>18 I will read to you the beginning of it, and then you</p> <p>19 will know. "Went out to assist Bronson Security</p> <p>20 Officer Ripley and day shift Public Safety Officer</p> <p>21 Nugent with a subject James Ronald Dunigan, who was</p> <p>22 refusing to leave the emergency room after being</p> <p>23 discharged. Mr. Dunigan had been cleared medically by</p> <p>24 ER and wheeled out to the lobby around 4:27 a.m.</p> <p>25 Apparently staff had told him he could wait until the</p>

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<p style="text-align: right;">Page 17</p> <p>1 busses started running. Security" --</p> <p>2 Q. All right. Doctor, I'm sorry to interrupt. I</p> <p>3 apologize. You don't need to read the whole thing.</p> <p>4 That appears to be a statement by the security officer</p> <p>5 or police officer.</p> <p>6 A. Yes, that is what it is.</p> <p>7 Q. But let's continue trying to identify the material you</p> <p>8 have reviewed.</p> <p>9 A. Okay. I will tell you material that I reviewed.</p> <p>10 There is an almost two-inch document of medical</p> <p>11 records from Bronson Hospital.</p> <p>12 Q. Records in addition to -- do those records include the</p> <p>13 Emergency Department visit of May 6th, 2016 or records</p> <p>14 of prior care?</p> <p>15 A. Let me see. These are old records. The date on the</p> <p>16 top record is August 8th -- sorry, August 11th, it's</p> <p>17 hard to make out, of the year 2009.</p> <p>18 Q. Can you tell where those records are from? Are they</p> <p>19 from Bronson?</p> <p>20 A. Bronson. Bronson Hospital.</p> <p>21 Q. All right. As you held them up, I saw what appeared</p> <p>22 to be sticky notes, pink sticky notes?</p> <p>23 A. Yes, they are sticky notes that my office manager put</p> <p>24 in.</p> <p>25 Q. You did not put those in?</p>	<p style="text-align: right;">Page 19</p> <p>1 there is another copy of the Complaint, a Complaint to</p> <p>2 another entity, another person, another Complaint. I</p> <p>3 think there are four such Complaints. There is</p> <p>4 another medical record from Bronson Hospital, which is</p> <p>5 an admitting record. The date of this record is the</p> <p>6 date in question, which is May 6th, 2016 at 2:13 at</p> <p>7 night, which is the date that Mr. Dunigan came to the</p> <p>8 emergency room.</p> <p>9 There is another similar record, which is</p> <p>10 labeled Incident/Investigation Report dated May 13th,</p> <p>11 2016. This is subtitled Incident Information. The</p> <p>12 main title on the top is Incident/Investigation</p> <p>13 Report.</p> <p>14 Q. Do you know by whom that report was created or by what</p> <p>15 entity that report was created?</p> <p>16 A. The report is the same format as other reports, and in</p> <p>17 particular the Bronson Hospital record dated 5-6-2016</p> <p>18 and with a time of 2:13, which I just read to you a</p> <p>19 minute ago. That is the record -- these two seem to</p> <p>20 be related because they look the same.</p> <p>21 The first one, of course, as I stated, was</p> <p>22 the time 2:13 is when Mr. Dunigan came -- arrived at</p> <p>23 the emergency room, at 2:13 at night. Then there is a</p> <p>24 record here, which is from -- which I think is a</p> <p>25 duplicate actually, from Ernst R. Von Schwarz, M.D.,</p>
<p style="text-align: right;">Page 18</p> <p>1 A. No, I did not.</p> <p>2 Q. Do you know what they designate?</p> <p>3 A. No, I don't know what they designate specifically</p> <p>4 other than that they are old medical records.</p> <p>5 Q. Did you review those old medical records?</p> <p>6 A. I skimmed them. That's about it.</p> <p>7 Q. Did you review the depositions you have listed?</p> <p>8 A. Most of them I have. Some of them I have skimmed just</p> <p>9 to make me acquainted with the fact that those are</p> <p>10 really not necessary for me to know in detail because</p> <p>11 I had already formulated my opinions. I had written a</p> <p>12 document about my main opinions. I supplemented my</p> <p>13 information that I had from before by reading the</p> <p>14 depositions that came yesterday, and that's about it.</p> <p>15 There is some documents that I thought I</p> <p>16 need to review. Others I really did not need to</p> <p>17 review because there was duplicate information in</p> <p>18 them. By skimming them the information that I would</p> <p>19 be confronting is already covered in other depositions</p> <p>20 and documents. So I did not really continue to review</p> <p>21 those documents. I did not think that that was</p> <p>22 necessary.</p> <p>23 There is a record here from the ambulance</p> <p>24 crew, which is listed -- which is labeled pre-hospital</p> <p>25 care report summary. That is dated 01-17-2016. Then</p>	<p style="text-align: right;">Page 20</p> <p>1 Ph.D. This one is dated December 31, 2017.</p> <p>2 In addition to these records there is an</p> <p>3 autopsy report, which was compiled by Dr. Douglas, I</p> <p>4 think, Elizabeth Douglas, M.D. There is also a death</p> <p>5 certificate and a toxicology report. This is the</p> <p>6 extent of the documents that I have except for the</p> <p>7 document that I generated, which is my opinion letter.</p> <p>8 Q. So you have now identified all of the material you</p> <p>9 have reviewed related to this case?</p> <p>10 A. Yes.</p> <p>11 Q. Aside from the report you prepared on April 15th, 2017</p> <p>12 that we have received, do you have any other notes or</p> <p>13 writings related to your review of this case?</p> <p>14 A. I do. But I hasten to in this regard because these</p> <p>15 are not opinion notes, but rather sections that I</p> <p>16 wanted to summarize from the records. So they are</p> <p>17 notes, all right, but they are not opinion notes. My</p> <p>18 opinions are rendered in the letter that I wrote to</p> <p>19 Mr. Harrington on April 15th, 2017.</p> <p>20 Q. How many pages of notes do you have?</p> <p>21 A. Let me see. I don't know. Somewhere around ten or</p> <p>22 so. Maybe it's nine. That's it.</p> <p>23 Q. Please assemble all of the pages of the notes you have</p> <p>24 and hand them to the court reporter to be marked as an</p> <p>25 exhibit.</p>

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<p style="text-align: right;">Page 21</p> <p>1 A. Okay.</p> <p>2 MARKED BY THE REPORTER:</p> <p>3 DEPOSITION EXHIBIT 1</p> <p>4 3:10 p.m.</p> <p>5 BY MR. O'LOUGHLIN:</p> <p>6 Q. Has it been marked?</p> <p>7 A. It has been marked, and this is Exhibit Number 1.</p> <p>8 Q. Is Exhibit Number 1 then collectively the pages of all</p> <p>9 of the notes you have made related to this case?</p> <p>10 A. Yes. There is one letter on the top of -- I didn't</p> <p>11 separate a letter from Mr. Harrington's paralegal,</p> <p>12 Devon Barry. That letter is appended to five yellow</p> <p>13 pages, lined yellow pages, which are my notes.</p> <p>14 Q. Thank you.</p> <p>15 A. There is additional yellow pages, which are also part</p> <p>16 of this package that we marked just now, but those are</p> <p>17 not -- they are loose. They are not attached to the</p> <p>18 Fieger office letter.</p> <p>19 Q. But they are part of Exhibit 1?</p> <p>20 A. They are part of Exhibit 1. Am I correct? Yes, I am</p> <p>21 correct.</p> <p>22 Q. I would like those to be kept together and arranged</p> <p>23 for copies to be made to be attached to the</p> <p>24 transcript.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. Not necessarily that he wanted, but I have my own</p> <p>2 method of writing opinions. So most of my opinions</p> <p>3 are very similar, depending on the case of course. So</p> <p>4 I write the opinion accordingly. Usually it</p> <p>5 answers -- the opinions would answer anybody's request</p> <p>6 for review and opinion. Many times I don't even know</p> <p>7 these lawyers, but the opinions are usually very</p> <p>8 similar in that they would answer the majority of</p> <p>9 inquiries.</p> <p>10 Q. Did you understand, either from being directly asked</p> <p>11 or from your routine, based upon the many cases you</p> <p>12 have had with the Fieger firm in the past, did you</p> <p>13 understand whether you were being asked to comment in</p> <p>14 any way on the quality of care provided?</p> <p>15 A. No. The quality of care I don't usually tackle that</p> <p>16 because I am not an emergency physician, and I'm a</p> <p>17 forensic pathologist, so I do not address standard of</p> <p>18 care. Although there are some issues here in this</p> <p>19 case that I, as a person, not as an expert even, but</p> <p>20 as a person, I took exception to the way that this</p> <p>21 individual was handled. He was not handled like I</p> <p>22 would want to be handled or like anybody in my family</p> <p>23 should be handled. So I told him that. But I don't</p> <p>24 know if I wrote it in my opinion.</p> <p>25 I haven't reviewed my opinion in some time,</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. When you were contacted regarding this case, what were</p> <p>2 you asked to do?</p> <p>3 A. I was asked to, like I normally do, determine the</p> <p>4 cause of death, determine to see if there was</p> <p>5 conscious pain and suffering, and I'm saying I wasn't</p> <p>6 specifically instructed to do this or that because</p> <p>7 that is the way that Fieger's office sends me files.</p> <p>8 I have worked with them a fairly large number of</p> <p>9 times, so I should know what they need. So I address</p> <p>10 those issues. Those are addressed in my report.</p> <p>11 Q. So what are those things that you know the Fieger firm</p> <p>12 needs when it sends you a file, a record?</p> <p>13 A. Well, they want to know the cause of death. They want</p> <p>14 to know whether this individual had conscious pain and</p> <p>15 suffering, whether the death certificate is correctly</p> <p>16 issued, whether the manner of death is correct and</p> <p>17 various -- yes, that's about it.</p> <p>18 Then if they have other questions, they</p> <p>19 call me, and they say well, you didn't include such</p> <p>20 and such, and then I may add it or I may not add it,</p> <p>21 depending on what is the question that they ask me.</p> <p>22 But I've known Jim Harrington for a long time, and I</p> <p>23 know what he wants usually.</p> <p>24 Q. Have you now listed those things that you understood</p> <p>25 he wanted?</p>	<p style="text-align: right;">Page 24</p> <p>1 but I don't believe that Mr. Dunigan, with his</p> <p>2 underlying condition that he had at the time the</p> <p>3 police came and took him to the jail, that they</p> <p>4 handled him correctly. I would not want to be handled</p> <p>5 that way.</p> <p>6 Q. Okay. Let's sort a few things out. You have agreed</p> <p>7 that you are not an emergency medicine physician,</p> <p>8 correct?</p> <p>9 A. No, that is correct.</p> <p>10 Q. And not an expert in emergency medicine, correct?</p> <p>11 A. No, I'm not an expert in emergency medicine, but I'm a</p> <p>12 physician who knows certain things that occurred here.</p> <p>13 And under those circumstances this is individual did</p> <p>14 not belong in jail, belonged to the hospital, and he</p> <p>15 was not allowed to stay in the hospital. He was not</p> <p>16 even admitted.</p> <p>17 So all of these things together, and then</p> <p>18 on top of that, taken to the hospital, yes, I know</p> <p>19 that he asked to be taken to the hospital, but what</p> <p>20 does he know about what needs to be admitted and what</p> <p>21 really his underlying condition is. He didn't know</p> <p>22 that. Mr. Dunigan had no idea what he is suffering.</p> <p>23 So when I take all that together, I did not</p> <p>24 like the -- as a physician, not as an expert forensic</p> <p>25 pathologist, but as a physician, I did not like the</p>

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<p style="text-align: right;">Page 25</p> <p>1 way this man was handled, this man was treated, this</p> <p>2 man was confronting when he was handled by a number of</p> <p>3 people who were not necessarily treating him like a</p> <p>4 patient, not like -- and like a sick patient, like a</p> <p>5 patient who was in the throes of death. They did not</p> <p>6 recognize it, and they should have recognized it.</p> <p>7 That is my opinion.</p> <p>8 Q. You don't claim to be an expert in emergency medicine,</p> <p>9 correct?</p> <p>10 A. No, I'm not an emergency medicine physician.</p> <p>11 Q. You don't claim to be an expert in emergency nursing,</p> <p>12 correct?</p> <p>13 A. No, that is correct.</p> <p>14 Q. You don't claim to be an expert in radiology, correct?</p> <p>15 A. Correct.</p> <p>16 Q. You don't claim to be an expert in hospital security,</p> <p>17 correct?</p> <p>18 A. Correct.</p> <p>19 Q. You don't claim to be an expert in law enforcement or</p> <p>20 the conduct of law enforcement officers, correct?</p> <p>21 A. Correct.</p> <p>22 Q. Do you claim to be an expert in the law known as</p> <p>23 EMTALA, the Emergency Medical Treatment and Active</p> <p>24 Labor Act?</p> <p>25 A. Yes, I'm aware of such a thing, but I have not ever</p>	<p style="text-align: right;">Page 27</p> <p>1 really very little connected to him falling out of a</p> <p>2 bus when he sustained the fall and hit something on</p> <p>3 cement, as he indicated.</p> <p>4 It was a different kind of chest pain</p> <p>5 altogether, and that chest pain is notorious for</p> <p>6 fearing doom. That pain is a different kind of pain.</p> <p>7 That is the pain of a heart attack.</p> <p>8 Q. Upon what do you base that statement?</p> <p>9 A. On the fact that he had manifestations of congestive</p> <p>10 heart failure. His breathing, his sickening type of</p> <p>11 snoring that is not that he is sleeping, but it is a</p> <p>12 kind of snoring, if you will, where fluids in the lung</p> <p>13 go up and down the airway every breath he takes. That</p> <p>14 is not necessarily annoying for others to hear. That</p> <p>15 is not the issue. The issue is that it scared the</p> <p>16 daylights out of the individual who suffers it.</p> <p>17 It is a type of pain is associated with</p> <p>18 asphyxiation. Asphyxiation is always a very fearful</p> <p>19 experience because here the lung contains fluid. When</p> <p>20 the fluid is moved by breathing up and down, there is</p> <p>21 in addition to the noise that this makes, there is</p> <p>22 also a lack of air in the lungs substituted for</p> <p>23 fluids, so-called edema fluids, which is none other</p> <p>24 than froth.</p> <p>25 And the officers looked at all that, stated</p>
<p style="text-align: right;">Page 26</p> <p>1 made use of that type of information. So I know of</p> <p>2 it, but I really don't know a whole lot of it.</p> <p>3 Q. When you say you haven't made use of it, that means</p> <p>4 you haven't had to worry about complying with EMTALA?</p> <p>5 A. Or not complying. I don't know enough about EMTALA to</p> <p>6 know how to handle that. I don't see patients in my</p> <p>7 practice.</p> <p>8 Q. Correct. What is your understanding of why</p> <p>9 Mr. Dunigan came to the Emergency Department in the</p> <p>10 early morning hours of May 6th, 2016?</p> <p>11 A. Well, he had chest pain he claims, and he came because</p> <p>12 it was for him a fearful experience. That is what</p> <p>13 took him to the hospital. He, in fact, was in a</p> <p>14 condition which in his mind required transport to the</p> <p>15 hospital, like you said, in the middle of the</p> <p>16 nighttime, and it was a fearful experience for him, so</p> <p>17 he called for an ambulance to take him.</p> <p>18 Q. What is your understanding of how long he had had this</p> <p>19 chest pain?</p> <p>20 A. He indicates that, as a layperson, I have to say that,</p> <p>21 he says that -- or he thought there is a connection</p> <p>22 between his chest pain and the bruise he had on his</p> <p>23 chest and his actual pain, that that resulted from</p> <p>24 internal bleeding he thought, and that he -- chest</p> <p>25 pain from -- the real reason for the chest pain was</p>	<p style="text-align: right;">Page 28</p> <p>1 it in their packing him into the seat in the police</p> <p>2 vehicle, did nothing about it. They said: Oh, he is</p> <p>3 faking. Oh, we know well what to expect from him, and</p> <p>4 so on and so forth. The officers know or should know</p> <p>5 what that means. I know they are not physicians, but</p> <p>6 they should know that because it occurs a lot more</p> <p>7 often than we want.</p> <p>8 Q. Doctor, if we can, for the sake of addressing</p> <p>9 different periods of time, break this ED presentation</p> <p>10 down into the period of time from when Mr. Dunigan was</p> <p>11 picked up by the ambulance to the time that he was</p> <p>12 discharged from the Emergency Department into the</p> <p>13 waiting room, when he was wheeled into the waiting</p> <p>14 room in a wheelchair. Do you understand that frame of</p> <p>15 time I'm talking about?</p> <p>16 A. Well, it's kind of a long question which requires</p> <p>17 probably a long answer, but I hope I will comply with</p> <p>18 your request. If I don't, so please tell me.</p> <p>19 Q. Let me go back and get some foundation. Did you</p> <p>20 review the videos that you received as listed in your</p> <p>21 report?</p> <p>22 A. Yes, I did review that. I reviewed the videos. To</p> <p>23 answer your question, I would like to state that the</p> <p>24 video clearly shows, or one of them, clearly shows a</p> <p>25 restless -- I mean a restless individual who aimlessly</p>

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<p style="text-align: right;">Page 29</p> <p>1 walks around because he is experiencing -- well, for 2 lack of a better term, he is experiencing the sense 3 that he is no long for this world. He is experiencing 4 pain that elicits in him the thought that he will soon 5 die. He hears himself breathe. He knows how he 6 feels. He has acute chest pain of the type that is 7 horrible. People are driven to hospitals all the time 8 when they experience this kind of pain. 9 So that is what the video clearly shows. 10 Then the video shows him in the way he was handled 11 when they put him out on the curb because they decided 12 in the hospital that he has to leave the hospital. So 13 they gave an order to the police safety people, to the 14 police officers that worked for the hospital, to take 15 him out of there. That was not very nice of them 16 either. 17 Although they gave him permission to stay 18 until 6:00, it wasn't until 6:30 that -- or close to 19 6:30 that he was actually placed on the curb to fend 20 for himself. Police came and took him off from the 21 hospital, and there is a video which shows how he is 22 handled when he is put in the vehicle. He is pushed 23 into the vehicle. He is falling over. They pull him 24 and shove him and treat him like an object, not like a 25 person.</p>	<p style="text-align: right;">Page 31</p> <p>1 evaluated and discharged from the Emergency 2 Department? 3 A. Yes. I'm fully aware of that, but I don't necessarily 4 agree with that handling either. 5 Q. All I'm trying to get here, Doctor, is to a timeframe 6 so that we can ask questions. What I'm talking about 7 is the timeframe up to the time that Mr. Dunigan is 8 discharged from the Emergency Department and into the 9 waiting room. My question is do you understand the 10 timeframe I'm talking about? 11 A. Yes, I understand fully. From 2:13 when he arrived 12 until 4:30. 13 Q. Okay. Thank you. From the time he was picked up by 14 the ambulance until the time he is discharged to the 15 waiting room, are you aware of any evidence that he 16 exhibited any clinical signs or symptoms of I will 17 start with a myocardial infarction? 18 A. I don't know whether I can answer that because there 19 really is no medical information that would have 20 allowed me to make that kind of statement to answer 21 your question. An x-ray to determine whether he has 22 got broken ribs and then they find no broken ribs and 23 make a diagnosis that there is nothing wrong with him, 24 so they discharged him, that is not the way to do it. 25 My objection is that I, without necessarily</p>
<p style="text-align: right;">Page 30</p> <p>1 He is heard by me breathing this terrible 2 snoring sound. He at the same time he is -- a comment 3 is made by officers that he is foaming at the mouth. 4 Well, you know, as a physician, not as an emergency 5 physician, but as a physician who has been taught over 6 and again that this kind of thing is not long. This 7 type of thing is ending in death of this patient. 8 How does he die? He dies of suffocation. 9 That is a horrible type of death. That is what I saw. 10 That I hope answers your question. 11 Q. Not even close, Doctor. My question was did you 12 review the videos, yes or no? 13 A. Yes, I did. 14 Q. Thank you. I will move to strike all of the other 15 information you just tried to convey. 16 A. Okay. 17 Q. Do I have your permission to interrupt you in the 18 future when you go way off course and go beyond the 19 question I'm asking? 20 A. Of course. 21 Q. All right. Did you review the videos from the Bronson 22 waiting room? 23 A. Yes. 24 Q. Did you understand that what was depicted in those 25 videos was a period of time after Mr. Dunigan had been</p>	<p style="text-align: right;">Page 32</p> <p>1 dealing with the standard of care, because I don't 2 know what the standard of care is, but as a physician, 3 I can tell you that I don't want to be handled that 4 way. Neither do I want anybody else to be handled 5 that way. They did nothing for this individual. They 6 did nothing in the emergency room, and they should 7 have done something for him. That something may even 8 have extended his life. 9 Q. Doctor, if you could listen to my question and try 10 just to answer the question rather than giving 11 speeches. I will tell you right now that I will 12 object to paying you one dime if we go beyond three 13 hours because of the length of your answers, and I 14 will be happy to present that to Court. 15 A. Okay. 16 Q. Now, my question was are you aware of any evidence 17 that Mr. Dunigan exhibited any clinical signs or 18 symptoms of an MI, a heart attack, up to the time he 19 was discharged from the Emergency Department into the 20 waiting room? 21 A. Yes. He complained of pain, of chest pain. That is 22 all he could complain about. In addition to that 23 there is some evidence of him having swollen legs. In 24 addition to that he had difficulty breathing. So all 25 this points to at least excluding --</p>

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<p style="text-align: right;">Page 33</p> <p>(Telephone connection cut out at 3:35 p.m.)</p> <p>(Back on the record at 3:39 p.m.)</p> <p>BY MR. O'LOUGHLIN:</p> <p>Q. I can tell you that I lost you after my last question from the time you said "chest pain." So I don't have any idea what you said after that or if the court reporter took it down. We will try to resume if I may.</p> <p>A. Well, maybe that is all as well that you lost it.</p> <p>Q. It probably is all as well, but thank you. If I may, I don't want the answer read back because it looked like you were talking for a really long time after that question. So if I may, I would like to ask it again. Is that acceptable?</p> <p>A. Sure.</p> <p>Q. I am talking about the time period from the time Mr. Dunigan was picked up by the ambulance to the time he was discharged from the Emergency Department and wheeled into the waiting room. Can you point to evidence of any clinical signs or symptoms of a heart attack that he exhibited?</p> <p>A. None really as indicated in the emergency room records that permits me to quote them at this time. When such a situation arises, it should -- there are situations where it's a matter of ruling out. Not every</p>	<p style="text-align: right;">Page 35</p> <p>Emergency Department and wheeled into the waiting room, did he have any signs or symptoms of a heart attack? Your answer started as "no." If that is the answer, I will take it. If you know the signs and symptoms, I want to know about those.</p> <p>A. Well, he had chest pain. That was his complaint when he came in.</p> <p>Q. Any potential sign or symptom of a heart attack other than that?</p> <p>A. That is a sign of a heart attack unless proven otherwise.</p> <p>Q. Anything other than chest pain which you would consider a sign or symptom of a heart attack that he presented up to the time he was discharged to the waiting room?</p> <p>A. I do not see any mention in the record of the emergency room that would talk about manifestations of a heart attack because I must think from the lack of mentioning any other manifestations, which in my opinion don't have to be there, but at least -- I don't know that they even tried to find anything else.</p> <p>There are things that can be done with somebody who has chest pain with a history of a heart condition that would at least need -- call for doing something that would confirm or dismiss the thought of</p>
<p style="text-align: right;">Page 34</p> <p>condition is manifested by symptoms. But chest pain in a 57 year old individual with a history of -- he had a history, a long history, from the hospital where he is known to have hypertension and diabetes and all these conditions that he had. They knew that. They had this on record.</p> <p>So it's a matter of saying wait a minute, this individual has been here for years and been coming here to get medical care. So why don't we look this up on the computer. If they would have done that, they would have known his background. That was never done. Instead, they took an x-ray and sent him to the curb.</p> <p>Actually, they allowed him to stay until 6:00 when the busses go. So he sat there, but he is obviously on the video that I saw, he is --</p> <p>Q. Doctor, you gave me permission earlier when you went way beyond the question --</p> <p>A. Okay.</p> <p>Q. Now, my question -- do you remember my question?</p> <p>A. What did he do between 2:13 -- or what happened between 2:13 and 4:30. That is your question. Am I correct?</p> <p>Q. My question is from the time he was picked up by the ambulance to the time he was discharged from the</p>	<p style="text-align: right;">Page 36</p> <p>a heart attack.</p> <p>Q. Aside from the complaint of chest pain as reflected in the medical record from the Emergency Department, did Mr. Dunigan exhibit any signs or symptoms of a heart attack up to the time he was wheeled into the waiting room?</p> <p>A. No, I'm not aware of any direct manifestations of a heart attack, but they don't have to be there. So I mean I don't know how else to answer that. If everybody had other manifestations that without any doubt confirm a heart attack other than a pathologist, the -- what ever happened to Troponin to do that, to find out if he has got manifestations of a heart attack? I don't know how to answer that any differently.</p> <p>Q. How about answering it straight, Doctor. You have given thousands of depositions. Please just try to answer my question without the speeches. What do you consider to be a clinical sign or symptom of a heart attack?</p> <p>A. Laboratory work.</p> <p>Q. You consider laboratory work to be a clinical sign or symptom?</p> <p>A. Yes. That is done in the clinic when somebody comes in in a condition that could be related to a heart</p>

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<p style="text-align: right;">Page 37</p> <p>1 attack. That should be used, and that is called for a</p> <p>2 laboratory.</p> <p>3 Q. Okay. I guess we should remember that you are not a</p> <p>4 clinician, true?</p> <p>5 A. No, I'm not a clinician.</p> <p>6 Q. Okay. This is unbelievable. Are you aware that every</p> <p>7 day all across the country thousands of people present</p> <p>8 to Emergency Departments with complaints of chest</p> <p>9 pain?</p> <p>10 MR. DAWSON: Objection, foundation.</p> <p>11 A. I'm sure that is true.</p> <p>12 MR. DAWSON: Go ahead, Doctor.</p> <p>13 A. I'm sure that that is true.</p> <p>14 BY MR. O'LOUGHLIN:</p> <p>15 Q. Are you aware of the fact that the vast majority of</p> <p>16 those patients do not have chest pain due to a heart</p> <p>17 attack?</p> <p>18 MR. DAWSON: Objection, foundation. Go</p> <p>19 ahead, Doctor.</p> <p>20 A. That is not my consideration, whether they have or</p> <p>21 don't have. It is -- it requires that everything be</p> <p>22 done in the interest of the patient with the chest</p> <p>23 pain at the right age that that patient could have a</p> <p>24 heart attack, and therefore, it has to be ruled out.</p> <p>25</p>	<p style="text-align: right;">Page 39</p> <p>1 in the wheelchair is when you see video of him in the</p> <p>2 waiting room, true?</p> <p>3 A. Yes.</p> <p>4 Q. Up to that point are you aware of any evidence</p> <p>5 indicating that his condition deteriorated or got</p> <p>6 worse up to that time from the time he got to the</p> <p>7 hospital?</p> <p>8 A. No, I don't see that in the emergency room there was</p> <p>9 evidence that he got worse in the emergency room.</p> <p>10 Q. With that same end point, up to the time that he was</p> <p>11 rolled into the waiting room after being discharged</p> <p>12 from the Emergency Department are you aware of any</p> <p>13 evidence that he had any sort of breathing difficulty</p> <p>14 or respiratory difficulty?</p> <p>15 A. There is no mention of any of that. The heart attack</p> <p>16 could have occurred with little or no manifestations.</p> <p>17 So that clinically a heart attack would not -- would</p> <p>18 may well be there but needs to be explored whether</p> <p>19 it's there or not because heart attacks can be very</p> <p>20 subtle in onset.</p> <p>21 So if you don't make an effort to find it,</p> <p>22 you are not going to know that it's there or not. He</p> <p>23 did not -- other than chest pain, severe chest pain,</p> <p>24 such that it was fearful for him to have that chest</p> <p>25 pain, and the negative x-ray on top of it, that</p>
<p style="text-align: right;">Page 38</p> <p>1 BY MR. O'LOUGHLIN:</p> <p>2 Q. Okay. Are you aware of any evidence, based upon your</p> <p>3 thorough review of all these materials, that</p> <p>4 Mr. Dunigan's condition in any way deteriorated up to</p> <p>5 the time that he was discharged from the Emergency</p> <p>6 Department and wheeled into the waiting room?</p> <p>7 A. I don't know what that means. Could you ask me that</p> <p>8 differently, please?</p> <p>9 Q. Are you aware of any evidence, based upon your review,</p> <p>10 that Mr. Dunigan's condition deteriorated or got worse</p> <p>11 up to the time that he was wheeled into the waiting</p> <p>12 room?</p> <p>13 MR. DAWSON: After he was discharged from</p> <p>14 care?</p> <p>15 MR. O'LOUGHLIN: Correct.</p> <p>16 MR. DAWSON: There you go, Doctor.</p> <p>17 MR. O'LOUGHLIN: But before he is wheeled</p> <p>18 into the waiting room or up to that time.</p> <p>19 BY MR. O'LOUGHLIN:</p> <p>20 Q. Do you understand my question, Doctor?</p> <p>21 A. Not really. No, I don't. He was discharged from the</p> <p>22 emergency room to the waiting room like around 4:30.</p> <p>23 Q. Let me just -- I'm still trying to set the stage. I</p> <p>24 can't believe it's this hard.</p> <p>25 After he is discharged to the waiting room</p>	<p style="text-align: right;">Page 40</p> <p>1 creates a problem if you are not going to continue</p> <p>2 looking for what may be the source of the pain when</p> <p>3 nothing that would show up on x-ray is actually there.</p> <p>4 Q. You agree that the chest x-ray was negative?</p> <p>5 A. The chest x-ray was negative. There was no evidence</p> <p>6 of broken ribs. There was no evidence of bruised</p> <p>7 lungs. There was no evidence of any positive</p> <p>8 manifestation that would warrant that kind of chest</p> <p>9 pain.</p> <p>10 Q. What was thought to be -- based upon your review, what</p> <p>11 was thought to be the cause of Mr. Dunigan's chest</p> <p>12 pain?</p> <p>13 A. He had chest pain because he had 99 percent occlusion</p> <p>14 of two major coronary arteries.</p> <p>15 Q. Maybe you misunderstood my question. Let me make it</p> <p>16 clear. From your review of the record and the reason</p> <p>17 Mr. Dunigan came to the hospital and the conclusion</p> <p>18 reached by the healthcare providers in the Emergency</p> <p>19 Department, what is your understanding of what was</p> <p>20 thought to be the cause of his chest pain?</p> <p>21 A. I have to believe that they thought that he fell out</p> <p>22 of the bus and bruised himself.</p> <p>23 Q. Which is exactly what he reported, true?</p> <p>24 A. Which is what he reported, yes. Otherwise, they</p> <p>25 wouldn't have known. Otherwise, they wouldn't have</p>

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<p style="text-align: right;">Page 41</p> <p>1 taken the x-ray.</p> <p>2 Q. And from your close review of the records, did you</p> <p>3 discern that on examination that chest pain was</p> <p>4 reproducible with palpation?</p> <p>5 A. You mean that if they pushed with their hand on his</p> <p>6 chest that it became worse?</p> <p>7 Q. In the area where the patient was complaining, yes.</p> <p>8 A. Yes. I understand that. I'm not surprised of that.</p> <p>9 But at the same time, it was the chest pain that got</p> <p>10 worse by exertion.</p> <p>11 Q. Upon what do you base that claim?</p> <p>12 A. Because the record does show that.</p> <p>13 Q. Where do you see anywhere in the record that it says</p> <p>14 this pain was worse with exertion?</p> <p>15 A. Well, I don't know where I saw it right now, but</p> <p>16 somewhere in the records it mentions chest pain</p> <p>17 getting worse from exertion.</p> <p>18 Q. Well, you better dig out the record.</p> <p>19 A. No, I can't do that now. That is just too much work</p> <p>20 to do that now.</p> <p>21 Q. It's not a long record.</p> <p>22 A. Because I need to read the record from the beginning.</p> <p>23 Let me see what I can come up with. This record is</p> <p>24 Bronson emergency room record. The middle of the</p> <p>25 page. I don't know what number. Here, page 2, it</p>	<p style="text-align: right;">Page 43</p> <p>1 timeframe from when he was picked up by the ambulance</p> <p>2 on May 6th to the time he was discharged from the</p> <p>3 Emergency Department and wheeled into the waiting room</p> <p>4 on May 6th. Do you have an opinion as to what was</p> <p>5 thought to be -- I'm sorry -- do you have any evidence</p> <p>6 that you can point to that indicates Mr. Dunigan</p> <p>7 complained of chest pain with exertion?</p> <p>8 A. Whether he had chest pain on exertion or not, he has</p> <p>9 evidence in the records where they know that he is</p> <p>10 diabetic, where they know that he is hypertensive,</p> <p>11 where they know that he has got some other time chest</p> <p>12 pain on exertion. All these things add up. Then he</p> <p>13 has -- somewhere I read that he had had swollen ankles</p> <p>14 as well.</p> <p>15 Q. I didn't understand what you said there.</p> <p>16 A. I said that somewhere I noticed that he had on that</p> <p>17 day he had swollen ankles, and he is a patient of</p> <p>18 diabetes, and they --</p> <p>19 Q. Doctor, I'm going to interrupt you again. Do you</p> <p>20 recall my question?</p> <p>21 A. Yes, I know your question. But I need to point out to</p> <p>22 you that there is a previous number of records at that</p> <p>23 very same hospital. So they knew of his condition or</p> <p>24 should have known.</p> <p>25 Q. Do you recall my question?</p>
<p style="text-align: right;">Page 42</p> <p>1 says chest pain on exertion. It's about five inches</p> <p>2 from the top.</p> <p>3 Q. Are you familiar with how you read Emergency</p> <p>4 Department records?</p> <p>5 A. I read them. I mean I know how to read English. It</p> <p>6 says chest pain on exertion.</p> <p>7 Q. Right. Do you believe that applies to a past history</p> <p>8 as opposed to what he presented on this occasion?</p> <p>9 A. This is a record of -- let me see.</p> <p>10 Q. Let me try as hard as I can to try to shorten it up.</p> <p>11 Do you see a date associated with that complaint?</p> <p>12 A. I see it is -- well, there are several dates. Maybe</p> <p>13 not. Yes, there are several dates.</p> <p>14 Q. 2012 and 2014?</p> <p>15 A. Yes.</p> <p>16 Q. Do you believe that that reference suggests that he</p> <p>17 had chest pain with exertion at the time he presented</p> <p>18 to the Emergency Department on May 6th, 2016?</p> <p>19 A. Well, it may be. I don't know. I'm not clear about</p> <p>20 whether it was on -- these were the dates when he had</p> <p>21 chest pain on exertion, and that would have -- should</p> <p>22 have raised a red flag for any time that if you have</p> <p>23 chest pain on exertion, at any other time that means</p> <p>24 the coronary arteries are in bad shape.</p> <p>25 Q. My question, again, I attempted to talk about the</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Yes.</p> <p>2 Q. Any evidence that Mr. Dunigan complained of chest pain</p> <p>3 with exertion at any time on that day, May 6th, 2016,</p> <p>4 at any time?</p> <p>5 A. No, I'm not aware.</p> <p>6 Q. Thank you. Based upon your review, would you agree</p> <p>7 that the healthcare professionals caring for</p> <p>8 Mr. Dunigan believed that his chest pain was due to</p> <p>9 the fall he reported when he got off the bus and fell</p> <p>10 at 6:00 p.m. the evening before?</p> <p>11 A. No, I don't agree with that.</p> <p>12 Q. You think the healthcare providers thought his chest</p> <p>13 pain was caused by something else?</p> <p>14 A. I think that they thought it was caused by something</p> <p>15 else because they did not eliminate anything else in a</p> <p>16 patient with the underlying record that he has.</p> <p>17 Q. Based upon your review -- can you point me to any</p> <p>18 evidence which would indicate that any of the</p> <p>19 healthcare professionals involved with Mr. Dunigan's</p> <p>20 care actually thought that his chest pain was due to</p> <p>21 something other than the fall he had suffered?</p> <p>22 A. I cannot crawl into their minds, but I can tell you</p> <p>23 that no effort was made to find out what really caused</p> <p>24 his chest pain.</p> <p>25 Q. Can you, based upon your review, identify any evidence</p>

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<p style="text-align: right;">Page 45</p> <p>1 that Mr. Dunigan's condition was unstable at the time</p> <p>2 he was discharged from the Emergency Department?</p> <p>3 A. Evidence there was not that he was unstable. But if</p> <p>4 they had explored, they would have found out that it</p> <p>5 was unstable.</p> <p>6 Q. Is the answer to my question that you are not aware of</p> <p>7 any evidence indicating that Mr. Dunigan's condition</p> <p>8 was unstable as of the time he was discharged from the</p> <p>9 Emergency Department to the waiting room?</p> <p>10 A. Well, he was unstable even -- I mean you could argue</p> <p>11 that he was unstable because of the way he behaved in</p> <p>12 the waiting room once he was discharged from the</p> <p>13 emergency room. He was totally anxious. He was</p> <p>14 walking around with his cane. He was holding on to</p> <p>15 furniture and seats and his cane to walk around. Let</p> <p>16 me think of the word I am looking for. Yes, he was</p> <p>17 anxious. He was concerned. He was worried about his</p> <p>18 condition because the pain was not related to -- they</p> <p>19 ruled out -- the x-ray ruled out that he had any major</p> <p>20 condition in his chest. Even a broken rib was not</p> <p>21 found. Nothing was found that would indicate that he</p> <p>22 had chest pain because of an injury.</p> <p>23 Q. Do you believe that one can experience chest pain from</p> <p>24 a fall without breaking a rib?</p> <p>25 A. Of course you can, but here you have a patient who has</p>	<p style="text-align: right;">Page 47</p> <p>1 I gleaned from the records.</p> <p>2 But it doesn't make any difference whether</p> <p>3 this was the day or not because he got -- he had to</p> <p>4 have dialysis in order to clear his blood of the waste</p> <p>5 product that it normally has if he does not get</p> <p>6 dialysis.</p> <p>7 His life expectancy was governed by his</p> <p>8 kidneys and probably to some extent of his heart as</p> <p>9 well and diabetes and so on and so forth. But that is</p> <p>10 not -- I disagree, by the way, with the comment made</p> <p>11 on the death certificate that the drugs that he took</p> <p>12 were a contributing factor to his death. I don't</p> <p>13 believe that.</p> <p>14 Q. Doctor, do you think you are capable of answering the</p> <p>15 questions I ask?</p> <p>16 A. I answer you the best I can.</p> <p>17 Q. Here is my question: Have you done any research or</p> <p>18 reading which would allow you to offer an opinion as</p> <p>19 to the average life expectancy of a patient in end</p> <p>20 stage renal failure requiring dialysis?</p> <p>21 A. Between five and seven years.</p> <p>22 Q. Upon what do you base that opinion?</p> <p>23 A. On the statistics.</p> <p>24 Q. From where?</p> <p>25 A. I don't know from where to tell you right now, but I</p>
<p style="text-align: right;">Page 46</p> <p>1 a record of heart conditions, cardiovascular</p> <p>2 conditions, COPD, he is known to have diabetes, known</p> <p>3 to have manifestations on other occasions that point</p> <p>4 to his heart and breathing organs, like lungs and</p> <p>5 chest wall and so on. They knew what they are dealing</p> <p>6 with, but did they make use of that knowledge? No,</p> <p>7 they did not.</p> <p>8 Q. Did you do any research or online search or reading in</p> <p>9 order to prepare your opinions and provide your</p> <p>10 opinions in this case?</p> <p>11 A. I did a lot of reading. Not for this case, but I</p> <p>12 started my reading when I went to medical school.</p> <p>13 Q. Have you done any research specifically for your</p> <p>14 review and providing opinions in this case?</p> <p>15 A. No, not providing for this case, but providing for all</p> <p>16 kinds of other cases that have similar problems.</p> <p>17 Q. Have you done any reading or research as to the life</p> <p>18 expectancy of a patient with end stage renal disease</p> <p>19 on dialysis?</p> <p>20 A. Well, I do a lot of autopsies on these patients, so I</p> <p>21 get their records. The life expectancy of a dialysis</p> <p>22 patient is about seven years. This individual was on</p> <p>23 dialysis. In fact, I think that, if I'm not mistaken,</p> <p>24 this visit to the emergency room on May 6th was a</p> <p>25 Friday. So he got dialysis on Fridays. That is what</p>	<p style="text-align: right;">Page 48</p> <p>1 can always research where that comes from. But I have</p> <p>2 known that for a long time. There are documents</p> <p>3 issued by the life insurance companies, the major life</p> <p>4 insurance companies, and the CDC that gives you these</p> <p>5 kinds of estimates.</p> <p>6 Q. You have referred to statistics from life insurance</p> <p>7 companies in your report, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. You suggested that, based upon those statistics,</p> <p>10 someone of Mr. Dunigan's age could expect to live</p> <p>11 another 23 years?</p> <p>12 A. Yes. With compliance he stands the chance of that</p> <p>13 kind of longevity. He was not always compliant.</p> <p>14 Q. How do you reconcile the opinion you just gave, that a</p> <p>15 person with end stage renal disease on dialysis has a</p> <p>16 life expectancy of five to seven years, with your</p> <p>17 suggestion that Mr. Dunigan had a life expectancy of</p> <p>18 23 years?</p> <p>19 A. No. Well, first of all, when I wrote that, I was not</p> <p>20 aware that he was not always compliant. That is one</p> <p>21 factor at least. So I also did not know much about</p> <p>22 his general medical conditions. But I know now, and</p> <p>23 that is why I'm saying with compliance he probably</p> <p>24 stands a much better chance than the average person.</p> <p>25 Q. Okay. Let me ask this: The average life expectancy</p>

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<p style="text-align: right;">Page 49</p> <p>1 of patients in end stage renal disease on dialysis</p> <p>2 doesn't mean necessarily patients who are compliant or</p> <p>3 noncompliant, true?</p> <p>4 A. No. I'm assuming that he was not always compliant.</p> <p>5 That is what I know. What that assumes in regards to</p> <p>6 Mr. Dunigan I really don't know.</p> <p>7 Q. Is it fair to say you don't really know what his life</p> <p>8 expectancy would have been?</p> <p>9 A. No, I don't say that. I say that the average life</p> <p>10 expectancy may be five to seven years, but what was</p> <p>11 Mr. Dunigan's life expectancy requires some more</p> <p>12 inquiry. I don't know what it means that he was not</p> <p>13 always compliant. If he was compliant or not</p> <p>14 compliant, I would assume that the conditions</p> <p>15 indicated on the death certificate have been with him</p> <p>16 for years, and so when I read that and when I read the</p> <p>17 comments on the death certificate with regards to</p> <p>18 drugs, I tend to believe that he had a much better</p> <p>19 life expectancy than is maybe assumed at face value.</p> <p>20 Q. First of all, you would withdraw the opinion in your</p> <p>21 report of April 15th, 2017 that Mr. Dunigan was</p> <p>22 deprived of at least 23 years of life. You no longer</p> <p>23 hold that opinion, true?</p> <p>24 A. No, that is not really true. I don't know if it's in</p> <p>25 the 20-year level that his life expectancy would have</p>	<p style="text-align: right;">Page 51</p> <p>1 A. Not quite.</p> <p>2 Q. All right.</p> <p>3 A. In every -- is that a question? Because then I can</p> <p>4 answer.</p> <p>5 Q. Didn't you already tell me that a patient with end</p> <p>6 stage renal failure on dialysis has an average life</p> <p>7 expectancy of five to seven years?</p> <p>8 A. Yes, I did.</p> <p>9 Q. All right. Didn't Mr. Dunigan have end stage renal</p> <p>10 disease and required dialysis?</p> <p>11 A. Yes, he required dialysis or transplant.</p> <p>12 Q. That five- to seven-year life expectancy with patients</p> <p>13 on dialysis doesn't only apply to patients who are</p> <p>14 noncompliant, does it?</p> <p>15 A. I don't know what that is based on other than the</p> <p>16 statistics indicate that the life expectancy of</p> <p>17 individuals on dialysis, three times a week dialysis,</p> <p>18 would have on the average a life expectancy of five to</p> <p>19 seven years.</p> <p>20 Q. Okay. Mr. Dunigan was a patient with end stage renal</p> <p>21 disease requiring dialysis three times a week, true?</p> <p>22 A. I think it is. Usually it is three times a week</p> <p>23 because when the kidneys are shot like in this case,</p> <p>24 then he would need dialysis three times a week.</p> <p>25 Q. So isn't he the kind of patient, based on statistics,</p>
<p style="text-align: right;">Page 50</p> <p>1 been, but that may require some more research. But</p> <p>2 only the future really would really tell whether it</p> <p>3 was or was even an extent of that. But for right now</p> <p>4 I think I would consider that the life expectancy may</p> <p>5 have been as high as 23 years, but may not have been.</p> <p>6 I would like to know that he improved his lifestyle.</p> <p>7 I would like to know that he is under medical</p> <p>8 supervision, compliant as it is, and I would then make</p> <p>9 my opinion as to the veracity of that statement in my</p> <p>10 report.</p> <p>11 Q. But we don't have the benefit of knowing what would</p> <p>12 have happened in the future if he lived, do we?</p> <p>13 A. Well, I don't know what would have been -- what would</p> <p>14 have occurred if he had lived, but I'm not surprised</p> <p>15 that he died because nothing was done for this</p> <p>16 individual.</p> <p>17 Q. When you attempt to -- and you do believe you are</p> <p>18 qualified to offer opinions on life expectancy?</p> <p>19 A. Oh, yes, I am.</p> <p>20 Q. Okay. In every case where you are offering that</p> <p>21 opinion in a death case, the patient is already dead.</p> <p>22 You have to rely upon statistics and studies and</p> <p>23 reviews of past cases to determine the likely time a</p> <p>24 patient would be expected to live beyond their actual</p> <p>25 date of death, true?</p>	<p style="text-align: right;">Page 52</p> <p>1 that would be considered to have a five-to seven-year</p> <p>2 life expectancy?</p> <p>3 A. Not necessarily.</p> <p>4 Q. Why not?</p> <p>5 A. Well, how do I know? Maybe next week something comes</p> <p>6 out where he can get a transplant. How do I know</p> <p>7 that? And why not? Why is he not eligible for a</p> <p>8 transplant? A lot of kidneys floating around these</p> <p>9 days.</p> <p>10 Q. Do you know whether that average life expectancy of</p> <p>11 five to seven years with patients in end stage renal</p> <p>12 disease includes the whole range of patients from</p> <p>13 patients who are noncompliant to patients who get a</p> <p>14 transplant?</p> <p>15 A. No, no, no. That is not so. I'm aware of patients</p> <p>16 with transplanted kidneys who do very well, very well</p> <p>17 indeed.</p> <p>18 Q. But the average overall of a patient like Mr. Dunigan,</p> <p>19 a patient in end stage renal failure requiring</p> <p>20 dialysis, is five to seven years according to your</p> <p>21 opinion. It's actually shorter than that, but --</p> <p>22 A. No. My opinion is perfectly fine to consider the life</p> <p>23 expectancy in Mr. Dunigan, sorry, in this individual,</p> <p>24 is based on the maximum that he is likely to live,</p> <p>25 considering all his conditions, not just the kidneys.</p>

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<p>1 The kidneys are one item here, and the</p> <p>2 necessity of dialysis is not a given in anybody.</p> <p>3 There are a lot of people who now get kidneys who</p> <p>4 never even thought of the likelihood that they might</p> <p>5 get one. They are able to get kidneys. So I think</p> <p>6 that the likelihood of an individual like this is not</p> <p>7 necessarily carved in rock that he would not qualify.</p> <p>8 I don't know that. So if he qualifies, he stands a</p> <p>9 chance, and that would eliminate dialysis.</p> <p>10 Dialysis is not a nontraumatic event. So</p> <p>11 dialysis has its own perils, and if he does not need</p> <p>12 dialysis, he is way ahead.</p> <p>13 Q. So did you or did you not testify multiple times so</p> <p>14 far today that on average a patient with end stage</p> <p>15 renal disease on dialysis has a life expectancy of</p> <p>16 five to seven years?</p> <p>17 A. That may be, but that goes for each and every case</p> <p>18 separately. It's not uniform for all of them.</p> <p>19 Q. But you attempt to decide on life expectancy by taking</p> <p>20 those statistical averages and applying them to a</p> <p>21 particular patient, true?</p> <p>22 A. When the circumstantial evidence causes me to do that,</p> <p>23 I do. When it doesn't, I do that too. That is why my</p> <p>24 testimony is what it is.</p> <p>25 Q. That five- to seven-year average life expectancy you</p>	<p>1 A. Yes.</p> <p>2 Q. Are you aware of any evidence indicating that he still</p> <p>3 had obvious manifestations of serious illness --</p> <p>4 A. He had --</p> <p>5 Q. -- referred to in your report?</p> <p>6 A. I have answered that. I have answered that before. I</p> <p>7 am unaware of him having other conditions because</p> <p>8 nothing else was done to find out if he had other</p> <p>9 conditions except that the record in the record room</p> <p>10 is full of them, and nobody ever pulled them and</p> <p>11 studied them and knew what they say.</p> <p>12 Q. Are you aware of any evidence that Mr. Dunigan</p> <p>13 demonstrated any frothing at the mouth at any time</p> <p>14 before he was placed in the police vehicle?</p> <p>15 A. No, I'm not aware of it, that he was frothing at the</p> <p>16 mouth at the hospital, but he sure was frothing at the</p> <p>17 mouth in the vehicle because I heard it. Frothing at</p> <p>18 the mouth and snoring, that type of snoring which I</p> <p>19 can only hope I never hear again.</p> <p>20 Q. Please try and listen to my question, Doctor. At any</p> <p>21 time before Mr. Dunigan is placed in the police</p> <p>22 vehicle are you aware of any evidence indicating that</p> <p>23 he had frothing at the mouth or was experiencing air</p> <p>24 hunger, difficulty breathing or dyspnea?</p> <p>25 A. No. I said that. I said that I'm unaware of it, if</p>
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<p>1 referred to could be reduced by other comorbidities</p> <p>2 other than end stage renal disease, true?</p> <p>3 A. Well, it obviously did in this case, but it didn't</p> <p>4 have to.</p> <p>5 Q. So that five- to seven-year average that you are</p> <p>6 talking about would be reduced even further if a</p> <p>7 patient also had diabetes and coronary artery disease?</p> <p>8 A. He has had diabetes for a long time. He has had</p> <p>9 coronary artery for a long time. He had COPD for a</p> <p>10 long time. He had hypertension for a long time. Does</p> <p>11 that mean that he has to die necessarily without</p> <p>12 affording him the best possible medical treatment that</p> <p>13 America can provide? Because that could be me. Maybe</p> <p>14 I shouldn't say me, but that could be I.</p> <p>15 Q. Up to the time that Mr. Dunigan was wheeled into the</p> <p>16 waiting room are you aware of any evidence that he had</p> <p>17 an obvious manifestation of serious illness or that he</p> <p>18 was foaming at the mouth or that he was experiencing</p> <p>19 pulmonary edema or that he was having air hunger,</p> <p>20 difficulty breathing, dyspnea or fear of doom?</p> <p>21 A. I'm sorry. I don't know -- I'm losing track of the</p> <p>22 question. Would you be so kind to say it again?</p> <p>23 Q. I'm still on the time period up to the time he is</p> <p>24 discharged from the Emergency Department to the</p> <p>25 waiting room.</p>	<p>1 he had it before he left.</p> <p>2 Q. Are you aware of any evidence indicating that at any</p> <p>3 time after his initial presentation to the Emergency</p> <p>4 Department Mr. Dunigan ever asked for any medical care</p> <p>5 or medical attention?</p> <p>6 A. Before what?</p> <p>7 Q. At any time after his initial presentation.</p> <p>8 A. You mean on 5-6-2016 at 2:13? That is when he came to</p> <p>9 the hospital.</p> <p>10 Q. Let me try it this way: Let's go from the time he was</p> <p>11 discharged from the Emergency Department and wheeled</p> <p>12 into the waiting room. Do you understand where I am</p> <p>13 in the time sequence there?</p> <p>14 A. Well, I don't know that he asked for medical care, but</p> <p>15 he didn't want to leave. That is for sure. He</p> <p>16 certainly didn't want to leave the hospital. Why he</p> <p>17 didn't want to leave I can only speculate. I don't</p> <p>18 know why he didn't want to leave, but it's obvious</p> <p>19 that if you don't want to leave the hospital, you are</p> <p>20 looking for more medical care, but maybe I'm wrong.</p> <p>21 Q. Upon what do you base the claim you just made, that</p> <p>22 Mr. Dunigan did not want to leave the hospital?</p> <p>23 A. Well, the records all show that. He didn't want to</p> <p>24 go. He didn't want to be taken elsewhere. He asked</p> <p>25 to be taken -- I don't know why he wanted to go to</p>

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<p style="text-align: right;">Page 57</p> <p>1 jail, but maybe he had hopes that they would provide</p> <p>2 him with more medical care. I don't know. He did not</p> <p>3 want to leave Bronson because that is abundantly</p> <p>4 documented in the various depositions that I read.</p> <p>5 Q. Are you aware of any evidence indicating that</p> <p>6 Mr. Dunigan ever complained of a medical problem or</p> <p>7 asked for medical care after he was wheeled into the</p> <p>8 waiting room?</p> <p>9 A. I'm unaware whether he asked for additional medical</p> <p>10 care. Maybe he didn't know that there was such</p> <p>11 available, but it's obvious that that is what he</p> <p>12 needed. Many times in my -- to my knowledge, patients</p> <p>13 don't know that they can get medical care for whatever</p> <p>14 they have, an ailment or a condition. They may not</p> <p>15 know. He may not have known that he should -- he has</p> <p>16 to ask for medical care. I really don't know that.</p> <p>17 But the fact is that he wasn't given that</p> <p>18 choice. He wasn't asked to come back in the room, in</p> <p>19 the emergency room. When he was seen walking around</p> <p>20 aimlessly holding on to furniture, obviously something</p> <p>21 is wrong with this man. So as a doctor, you would</p> <p>22 kind of frown that somebody, a nurse or a health</p> <p>23 provider, would not point out to the physician in the</p> <p>24 emergency room or other personnel that there is</p> <p>25 something wrong with that patient that should be</p>	<p style="text-align: right;">Page 59</p> <p>1 at Bronson saw Mr. Dunigan in a condition that</p> <p>2 indicated he needed medical attention after he was</p> <p>3 discharged to the waiting room?</p> <p>4 A. No, I'm not aware.</p> <p>5 Q. Thank you. What is your understanding of</p> <p>6 Mr. Dunigan's ability to ambulate prior to the time he</p> <p>7 fell getting off the bus on May 5th?</p> <p>8 A. I don't know what his walking -- I have no idea what</p> <p>9 his condition caused him to -- by way of ability to</p> <p>10 walk. I can't imagine that it did anything other</p> <p>11 than -- the heart condition that he had is likely to</p> <p>12 have caused him pain from walking, from exerting, from</p> <p>13 being exerted. But I don't know where I would have</p> <p>14 found that, that what happened on the day before, on</p> <p>15 the day before he went to Bronson. But stress is not</p> <p>16 exactly a good thing for somebody with that kind of</p> <p>17 heart condition that Mr. Dunigan had.</p> <p>18 Q. Based upon your review of everything you have seen in</p> <p>19 this case are you aware that Mr. Dunigan had a history</p> <p>20 of a stroke with hemiparesis?</p> <p>21 A. He had some difficulty walking because of that stroke</p> <p>22 because one side was weaker than the other, but</p> <p>23 whether they really interfered with his ability to</p> <p>24 walk with a cane I am not aware.</p> <p>25 Q. We are back to that. You don't know what his ability</p>
<p style="text-align: right;">Page 58</p> <p>1 explored. But nothing like that ever happened. The</p> <p>2 one thing that was done was an x-ray, which excluded</p> <p>3 trauma.</p> <p>4 Q. I'm becoming convinced that you are not capable of</p> <p>5 answering my questions, Doctor. But I'm just going to</p> <p>6 keep asking them.</p> <p>7 A. Go ahead.</p> <p>8 Q. I'm going to have to ask the same one again. Are you</p> <p>9 aware of any evidence indicating that Mr. Dunigan ever</p> <p>10 asked for any type of medical care after he went to</p> <p>11 the waiting room?</p> <p>12 A. I've already answered that. I said no, I'm not.</p> <p>13 Q. Thank you. Please stop there. Are you aware of any</p> <p>14 evidence that any physician or nurse saw any behavior</p> <p>15 in Mr. Dunigan which indicated that he needed medical</p> <p>16 attention?</p> <p>17 A. Any nurse?</p> <p>18 MR. DAWSON: After he was discharged from</p> <p>19 the ED?</p> <p>20 MR. O'LOUGHLIN: Correct.</p> <p>21 MR. DAWSON: Go ahead, Doctor.</p> <p>22 A. Any nurse at Bronson or any doctor at Bronson, or am I</p> <p>23 included in that too, because I saw him.</p> <p>24 BY MR. O'LOUGHLIN:</p> <p>25 Q. Are you aware of any evidence that any nurse or doctor</p>	<p style="text-align: right;">Page 60</p> <p>1 was to walk or ambulate with or without a cane prior</p> <p>2 to May 6th, 2016, true?</p> <p>3 A. No. I think with a cane he was able to walk. Maybe</p> <p>4 not as well as he did before he had the stroke, but he</p> <p>5 walked with a cane, or was able to walk with a cane.</p> <p>6 I can see him walk in the waiting room.</p> <p>7 Q. Do you know whether he was able to walk any better</p> <p>8 than he was when you saw him in the waiting room on</p> <p>9 the day before?</p> <p>10 A. I don't know how he was walking the day before, but in</p> <p>11 general he was able to walk. He was able to walk even</p> <p>12 on May 6th because that is when I saw him.</p> <p>13 Q. Did you say was or wasn't?</p> <p>14 A. Was. He was walking okay. He was walking. He was</p> <p>15 holding on to furniture, but that is explainable by</p> <p>16 his condition on that day, because on the 6th he was</p> <p>17 different than on -- he may have been different than</p> <p>18 on May 5th.</p> <p>19 Q. You don't know one way or the other, true?</p> <p>20 A. I know how he behaved on May 6th. I'm not so sure</p> <p>21 whether that applies to May 5th as well.</p> <p>22 Q. That is the point of my question, Doctor. Do you know</p> <p>23 whether his ability to ambulate as you saw it on May</p> <p>24 6th in the waiting room was any different than his</p> <p>25 ability to ambulate on May 5th before he fell getting</p>

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<p style="text-align: right;">Page 61</p> <p>1 off the bus?</p> <p>2 A. I just said that I do not know.</p> <p>3 Q. All right. Thank you. In your report you claim that</p> <p>4 Mr. Dunigan was discharged from the ER at 4:30 a.m.</p> <p>5 and that he was still in severe pain with obvious</p> <p>6 manifestations of serious illness.</p> <p>7 A. Yes.</p> <p>8 Q. What are you referring to in that claim as obvious</p> <p>9 manifestations of serious illness or an indication</p> <p>10 that he was still in severe pain?</p> <p>11 A. Well, his breathing, his froth, his behavior when he</p> <p>12 was trying to lie down and they didn't let him. They</p> <p>13 wanted him to sit up, and he couldn't maintain</p> <p>14 balance. All these things clearly indicate that he</p> <p>15 was not in a very good health condition.</p> <p>16 Q. You saw some difficulty breathing while he was in the</p> <p>17 waiting room?</p> <p>18 A. He didn't snore for nothing. That is a difficulty</p> <p>19 breathing. That is fluid, edema fluid, going up and</p> <p>20 down in his airways.</p> <p>21 Q. Are you now referring to the time when he was in the</p> <p>22 police vehicle?</p> <p>23 A. That is what you asked.</p> <p>24 Q. No. I asked in the waiting room.</p> <p>25 A. Well, that was not my impression.</p>	<p style="text-align: right;">Page 63</p> <p>1 life expectancy.</p> <p>2 Q. Okay. Let's talk about my question, which if you will</p> <p>3 recall, was specifically up to the time he was in the</p> <p>4 police vehicle. Do you recall that?</p> <p>5 A. Well, I interpreted that to mean --</p> <p>6 Q. Do you recall that or not?</p> <p>7 A. I interpreted that question to mean in the police</p> <p>8 vehicle.</p> <p>9 Q. Okay. So when I said between the time he was wheeled</p> <p>10 into the waiting room up to the time he was placed in</p> <p>11 the police vehicle, you thought that included the time</p> <p>12 after he was placed in the police vehicle?</p> <p>13 A. Not after, but in the police vehicle.</p> <p>14 Q. All right. Now, let me try and specify the parameters</p> <p>15 so we can get a straight answer. From the time</p> <p>16 Mr. Dunigan was wheeled into the waiting room after</p> <p>17 being discharged from the Emergency Department up</p> <p>18 until the time he is placed in the police car, but not</p> <p>19 including the time after he is placed in the police</p> <p>20 car, are you aware of any evidence that he exhibited</p> <p>21 severe pain or obvious manifestations of a serious</p> <p>22 illness?</p> <p>23 A. Well, yes, I am. I mean why would somebody in the</p> <p>24 room -- in the waiting room walk around holding on to</p> <p>25 the chairs and benches and using his cane? Why would</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. That period of time. Let's go from the time that he</p> <p>2 is wheeled into the waiting room until the time he is</p> <p>3 in the police vehicle. Are you aware of any</p> <p>4 indication that he was still in severe pain or had</p> <p>5 obvious manifestations of a serious illness?</p> <p>6 A. In the waiting room I did not hear him snore like</p> <p>7 that, although he may have. I did not hear it. In</p> <p>8 the police vehicle I heard it personally. So</p> <p>9 therefore, I'm fully aware that he was in a state of</p> <p>10 air hunger at that time. Air hunger is horrible. Air</p> <p>11 hunger is equivalent to fear of doom and fear of</p> <p>12 death.</p> <p>13 So having said that, the rest of the</p> <p>14 behavior in the police car where he couldn't sit up</p> <p>15 but constantly fell to the side where he would lie</p> <p>16 down, but they didn't let him, they sat him up by</p> <p>17 force. So that is also a manifestation of severe</p> <p>18 illness because normally people sit. They don't lie</p> <p>19 down in a vehicle unless they are in some condition</p> <p>20 that makes it imperative that they lie down.</p> <p>21 And then the foam at the mouth that the</p> <p>22 police officer who saw it, I did not personally see</p> <p>23 it, but he pointed to my attention of froth at the</p> <p>24 mouth when he said so. So I can only put all this</p> <p>25 under one umbrella, and that means bad health, short</p>	<p style="text-align: right;">Page 64</p> <p>1 they do that if they are in such good health? So</p> <p>2 having said that, he obviously had something happening</p> <p>3 to him that was not indicative of great health at that</p> <p>4 time. So that is really all I can tell you.</p> <p>5 Otherwise, I did not see him or hear him</p> <p>6 breathe. I did not see or hear him have foam around</p> <p>7 his mouth. But I base my opinion on his demeanor in</p> <p>8 the waiting room where he was anxious, did not sit</p> <p>9 down in spite of pain that he had because he came</p> <p>10 there with pain. Nothing was done to alleviate pain.</p> <p>11 So therefore, he still had it.</p> <p>12 Q. Is it fair to say that the only evidence you can point</p> <p>13 to indicating that Mr. Dunigan was still in severe</p> <p>14 pain or had obvious manifestations of a serious</p> <p>15 illness is what you saw on the video from the waiting</p> <p>16 room?</p> <p>17 A. What happened in the waiting room is what I saw on the</p> <p>18 pictures of what he did in the waiting room.</p> <p>19 Q. All right. What you just said, I believe, was that</p> <p>20 the only evidence you can point to to support that</p> <p>21 claim is the way he was moving around the waiting</p> <p>22 room?</p> <p>23 A. He was moving around. He was walking. He was trying</p> <p>24 to walk with a cane. He was holding on to the</p> <p>25 furniture. He was trying to lie down at some time and</p>

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<p style="text-align: right;">Page 65</p> <p>1 then got up suddenly again and moved around again. He</p> <p>2 was anxious. That is what he was. That is called</p> <p>3 exertion. That is called stress. That is called</p> <p>4 agitation. That is called an underlying health</p> <p>5 condition.</p> <p>6 Q. Did you earlier testify that you didn't know whether</p> <p>7 the way that Mr. Dunigan moved around the waiting room</p> <p>8 was any different than the way he moved the day</p> <p>9 before?</p> <p>10 A. I don't know how he moved the day before. I'm saying</p> <p>11 that again. But how he moved in the waiting room is</p> <p>12 clearly indicated on the pictures, on the video.</p> <p>13 Q. It is. It is. Is there anything about the way he</p> <p>14 moved that you can say would be different if he had</p> <p>15 been in the waiting room the day before, before he</p> <p>16 fell from the bus?</p> <p>17 A. I don't know what your question is, sir. I'm sorry,</p> <p>18 but I don't understand your questions. They are a</p> <p>19 little bit convoluted for me.</p> <p>20 Q. Okay. Let's try one that is not. You have in your</p> <p>21 report, first paragraph, second page, "Despite</p> <p>22 Mr. Dunigan's appearance and complaints of pain and</p> <p>23 his worsening condition," and again, that is the</p> <p>24 paragraph that refers to 4:30, after he was discharged</p> <p>25 to the waiting room. What evidence do you have that</p>	<p style="text-align: right;">Page 67</p> <p>1 somebody in distress. So in a hospital, in a medical</p> <p>2 environment, is it likely that somebody may have seen</p> <p>3 him? Well, I don't know how likely it is, but people</p> <p>4 walk around, nurses, healthcare personnel. So chances</p> <p>5 are, more likely than not, that somebody would have</p> <p>6 seen him. His doctor that he saw at 2:13 was also</p> <p>7 around. Other than that, I cannot answer that. That</p> <p>8 is my answer.</p> <p>9 Q. Well, okay. The paragraph I read referred to 4:30</p> <p>10 after he was discharged to the waiting room. Did you</p> <p>11 understand that?</p> <p>12 A. After he was discharged from the waiting room all I</p> <p>13 have is what the police tell me, and then there was</p> <p>14 also some pictures that I saw which depict</p> <p>15 Mr. Dunigan, but were they enough for me to make a</p> <p>16 diagnosis? No. So I'm not even referring to those</p> <p>17 pictures.</p> <p>18 But the fact is that there were police</p> <p>19 around. They also were aware about what he was doing</p> <p>20 and not believing him and all this is fake and so on.</p> <p>21 Q. Doctor, all right. After he was discharged from the</p> <p>22 waiting room and before he was placed in the police</p> <p>23 car are you aware of any evidence indicating that he</p> <p>24 complained of pain?</p> <p>25 A. I don't know if he complained. I didn't hear him.</p>
<p style="text-align: right;">Page 66</p> <p>1 Mr. Dunigan ever complained of pain after he was</p> <p>2 discharged to the waiting room?</p> <p>3 A. I don't know. Maybe he did have. Maybe he didn't. I</p> <p>4 don't know. I don't know the answer.</p> <p>5 Q. Why did you put it in your report?</p> <p>6 A. Well, what did I put in the report? Could you read me</p> <p>7 what I put?</p> <p>8 Q. Yes. You have, "At about 4:30 a.m. Dunigan was</p> <p>9 discharged from the ER and waited in the lobby at the</p> <p>10 hospital still in severe pain and obvious</p> <p>11 manifestations of serious illness. Despite Dunigan's</p> <p>12 appearance and complaints of pain and his worsening</p> <p>13 condition, Bronson personnel approved his release from</p> <p>14 the hospital."</p> <p>15 A. He came to the hospital with pain, with severe pain,</p> <p>16 in an ambulance. Nothing was ever done with him to</p> <p>17 alleviate that pain. So why would there suddenly be</p> <p>18 no pain? When he walks around in the waiting room, he</p> <p>19 is walking with difficulty. He is holding on to the</p> <p>20 furniture. He is walking with a cane. He is trying</p> <p>21 to lie down. He gets up after a minute or two and</p> <p>22 walks around again. He is anxious. He is worried.</p> <p>23 He is in a state of stress at that time. So whether</p> <p>24 he complained to anybody, I have no idea.</p> <p>25 But people watch like I do, and they see</p>	<p style="text-align: right;">Page 68</p> <p>1 All I know is what I can substantiate, and what I can</p> <p>2 substantiate I already said several times.</p> <p>3 Q. Would you put something in your report that you could</p> <p>4 not substantiate?</p> <p>5 A. I put something in my report that I could not</p> <p>6 substantiate? Is that what your question is?</p> <p>7 Q. Yes. Would you?</p> <p>8 A. I don't know. What I put in my report is clearly</p> <p>9 written down and in black and white, so --</p> <p>10 Q. What you put in your report was that, "Despite</p> <p>11 Mr. Dunigan's appearance and complaints of pain and</p> <p>12 his worsening condition Bronson personnel approved his</p> <p>13 release from the hospital."</p> <p>14 What I'm trying to find out is whether you</p> <p>15 have any evidence indicating that he complained of</p> <p>16 pain at any time after he was wheeled to the waiting</p> <p>17 room.</p> <p>18 A. That is obvious that he complained of pain because he</p> <p>19 came to the hospital because of it. That is why he</p> <p>20 summoned an ambulance. Did he not tell the ambulance</p> <p>21 why he is going to the hospital and not to the movies?</p> <p>22 Q. Apparently you didn't hear my question. Let me try it</p> <p>23 again. I'm talking about the time period after he was</p> <p>24 discharged from the Emergency Department to the</p> <p>25 waiting room, which is the time referred to in your</p>

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<p style="text-align: right;">Page 69</p> <p>1 paragraph that starts, "At about 4:30." Do you</p> <p>2 understand the timeframe I'm talking about?</p> <p>3 A. After 4:30. Is that what you are -- after 4:30.</p> <p>4 Q. Are you aware of any evidence that Mr. Dunigan ever</p> <p>5 complained of pain or a worsening condition after</p> <p>6 4:30?</p> <p>7 A. No, I'm not. I'm not aware that he complained to the</p> <p>8 police, because they are the ones that were outside</p> <p>9 with him, that he complained to them about pain. But</p> <p>10 I think that that would have fallen on deaf ears if he</p> <p>11 did. They are the ones who charged him with faking to</p> <p>12 begin with.</p> <p>13 Q. Do you hear my question?</p> <p>14 A. Yes, I hear your question.</p> <p>15 Q. Then please answer it.</p> <p>16 A. I told you that I have no knowledge. I would not talk</p> <p>17 to the police either because they are the ones that</p> <p>18 ran him into the ground. They are the ones that</p> <p>19 claimed that he was faking, and that occurred in fact</p> <p>20 all the time.</p> <p>21 Q. Are you aware of any evidence indicating that any</p> <p>22 Bronson security officer or other Bronson employee or</p> <p>23 any police officer didn't think that Mr. Dunigan was</p> <p>24 faking?</p> <p>25 A. I don't know. I did not talk to them about it. I am</p>	<p style="text-align: right;">Page 71</p> <p>1 indicated that he had a medical problem?</p> <p>2 MR. DAWSON: Objection, form of the</p> <p>3 question. When?</p> <p>4 A. I'm not aware of that statement in relationship to</p> <p>5 that visit on May 6th.</p> <p>6 BY MR. O'LOUGHLIN:</p> <p>7 Q. If that was the testimony of the security officers and</p> <p>8 the police officers, are you aware of any evidence</p> <p>9 that would contradict their testimony that Mr. Dunigan</p> <p>10 never indicated he had a medical problem?</p> <p>11 A. No, I'm not aware.</p> <p>12 Q. If they also testified that Mr. Dunigan never asked</p> <p>13 for medical care or asked to be seen by any healthcare</p> <p>14 provider after the time he was discharged to the</p> <p>15 waiting room, would you be able to point to any</p> <p>16 evidence that would contradict that testimony?</p> <p>17 A. Yes, I think I would, because he started snoring and</p> <p>18 frothing at the mouth as soon as he was put in the</p> <p>19 police vehicle. The pulmonary edema did not just</p> <p>20 suddenly occur. The pulmonary edema took time to</p> <p>21 develop. The frothing needed time to mix air with</p> <p>22 fluid as a result of breathing, so that took time as</p> <p>23 well. How much time? Fairly long time. All this</p> <p>24 must have, by necessity, have started before he even</p> <p>25 went into the vehicle. This did not just suddenly</p>
<p style="text-align: right;">Page 70</p> <p>1 aware that that is their conversation among each</p> <p>2 other. That is what I heard.</p> <p>3 Q. I think I got this, but I will tell you it's getting</p> <p>4 hard to tell. At any time up until Mr. Dunigan was</p> <p>5 placed in the police car are you aware of any evidence</p> <p>6 that he was experiencing air hunger, difficulty</p> <p>7 breathing, dyspnea or fear of doom?</p> <p>8 A. Yes, that is my opinion. That is correct. Nothing</p> <p>9 was done for Mr. Dunigan from 2:13 until -- or to</p> <p>10 alleviate pain and stress and fear. Nothing was done</p> <p>11 except an x-ray was done, which did nothing.</p> <p>12 Q. What evidence up to the time Mr. Dunigan was placed in</p> <p>13 the police car are you aware of that indicated he was</p> <p>14 having difficulty breathing, air hunger, dyspnea or</p> <p>15 fear of doom?</p> <p>16 A. His behavior in the waiting room.</p> <p>17 Q. What about that behavior indicated any of those</p> <p>18 things?</p> <p>19 A. I have already said that, and I think that the time</p> <p>20 will come when I will not say it again. I have said</p> <p>21 it now I don't know how many times. I really refuse</p> <p>22 to answer that again, so please ask me another</p> <p>23 question.</p> <p>24 Q. Did you read in testimony from the security officers</p> <p>25 and the police their statements that Mr. Dunigan never</p>	<p style="text-align: right;">Page 72</p> <p>1 develop out of the blue. Consequently, it is one</p> <p>2 thing to lie down, which already is visible on the</p> <p>3 video in the waiting room. Why should it now be</p> <p>4 different? So it didn't suddenly disappear.</p> <p>5 Therefore, it had to go on.</p> <p>6 Q. Let's try my question. If the security officers and</p> <p>7 police officers testified that Mr. Dunigan never asked</p> <p>8 for medical care, never asked to be seen by a</p> <p>9 healthcare professional, are you aware of any evidence</p> <p>10 contraindicating that testimony?</p> <p>11 A. No, he may not have. He may not have. I answered</p> <p>12 that before too. He may not have because he</p> <p>13 doesn't -- he doesn't need some more comments about</p> <p>14 oh, I know about him faking. I know about that. I</p> <p>15 have seen that well before many times.</p> <p>16 When you hear that kind of comment, you</p> <p>17 don't want to talk to those people.</p> <p>18 Q. I'm just going to keep asking, Doctor, because you</p> <p>19 seem incapable of --</p> <p>20 A. I told you before I did not hear that. I wasn't</p> <p>21 present at the time that he was in the emergency room,</p> <p>22 in the waiting room, on the curb, in the police car.</p> <p>23 I wasn't there. I'm basing my opinion only on what I</p> <p>24 read. What I read is not very complimentary to the</p> <p>25 police and to the hospital.</p>

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<p style="text-align: right;">Page 73</p> <p>1 Q. And what you have read and reviewed and everything you</p> <p>2 know about this case does not allow you to point to</p> <p>3 any evidence indicating that Mr. Dunigan ever asked</p> <p>4 for any medical care or attention after the time he</p> <p>5 was wheeled to the waiting room, true?</p> <p>6 A. He never asked. He may have talked to the doctor who</p> <p>7 saw him in the emergency room because he had to tell</p> <p>8 him something. He would have asked him why are you</p> <p>9 here. Then he would have told them. So we know that.</p> <p>10 I forget the name of that doctor. It's an M.D.</p> <p>11 physician who saw him in the emergency room and who</p> <p>12 gave a deposition. Other than that I don't know</p> <p>13 anything. I only base my opinions on the evidence</p> <p>14 that I read.</p> <p>15 MR. O'LOUGHLIN: If you would read back my</p> <p>16 question, please.</p> <p>17 (The requested portion of the record was</p> <p>18 read by the reporter at 5:00 p.m.)</p> <p>19 "Q. And what you have read and reviewed</p> <p>20 and everything you know about this case</p> <p>21 does not allow you to point to any evidence</p> <p>22 indicating that Mr. Dunigan ever asked for</p> <p>23 any medical care or attention after the</p> <p>24 time he was wheeled to the waiting room,</p> <p>25 true?"</p>	<p style="text-align: right;">Page 75</p> <p>1 indicates that a myocardial infarct is likely to be in</p> <p>2 the making. By the way, the left anterior descending</p> <p>3 coronary artery is also called the widow maker.</p> <p>4 Q. That's cute too. Did I ask anything about that,</p> <p>5 Doctor? Just let me ask my question, please. After</p> <p>6 hours what microscopic changes of a myocardial</p> <p>7 infarction would you expect to see at autopsy?</p> <p>8 A. Myocardial fibers being -- beginning to be necrotic,</p> <p>9 and you may expect some neutrophils to be scattered</p> <p>10 around the same area.</p> <p>11 Q. Does this autopsy report indicate such findings?</p> <p>12 A. No, it does not. I told you it requires hours for</p> <p>13 that to occur.</p> <p>14 Q. Hours of what, hours of infarction?</p> <p>15 A. Hours of a clock.</p> <p>16 Q. Do you have any knowledge that would tell you whether</p> <p>17 a patient can have ischemic chest pain for more than</p> <p>18 an hour and not have infarction?</p> <p>19 A. Say that again.</p> <p>20 Q. Are you aware, based upon your medical knowledge, that</p> <p>21 if a patient has ischemic chest pain for more than an</p> <p>22 hour, that, by definition, has to result in</p> <p>23 infarction?</p> <p>24 A. No, that is not true.</p> <p>25 Q. How many hours does it take for contraction band</p>
<p style="text-align: right;">Page 74</p> <p>1 A. Yes, I have answered that. I have answered it that I</p> <p>2 did not hear it, but I wouldn't talk to those people</p> <p>3 that you indicated or asked me about whether I heard</p> <p>4 him talk to them. I would not be surprised if he</p> <p>5 didn't tell them anything.</p> <p>6 BY MR. O'LOUGHLIN:</p> <p>7 Q. At autopsy, the postmortem examinations, are there</p> <p>8 findings which would be indicative of a recent</p> <p>9 myocardial infarction?</p> <p>10 A. Yes. Well, no, there is not a myocardial infarction</p> <p>11 per se because myocardial infarctions take hours to be</p> <p>12 manifested even under the microscope. So there are</p> <p>13 manifestations of 99 percent occlusions, stenosis, of</p> <p>14 two major coronary arteries.</p> <p>15 Q. Are there findings on microscopic postmortem</p> <p>16 examinations of the heart muscle that are indicative</p> <p>17 of a recent myocardial infarction?</p> <p>18 A. I would prefer if I could answer that question after I</p> <p>19 have reviewed the microscopic slides, but I have not.</p> <p>20 The answer to that question I gave you before where I</p> <p>21 said it requires hours for a myocardial infarction to</p> <p>22 make microscopic manifestations to allow</p> <p>23 identification of a myocardial infarct. But the 99</p> <p>24 percent stenosis of the passage in two major coronary</p> <p>25 arteries indicates a very lousy blood flow, which</p>	<p style="text-align: right;">Page 76</p> <p>1 necrosis and neutrophils, as you referred to, to</p> <p>2 appear on autopsy?</p> <p>3 A. How long it takes for a myocardial infarct to be</p> <p>4 identifiable microscopically? Is that your question?</p> <p>5 Q. I will start with that. Sure.</p> <p>6 A. Several hours. Four or five hours.</p> <p>7 Q. Which is it? Several or four or five?</p> <p>8 A. Well, sometimes it takes four. Sometimes it takes</p> <p>9 five. Sometimes it takes five and-a-half, and</p> <p>10 sometimes it takes three and-a-half. So it doesn't</p> <p>11 always do the same thing, but the average in my</p> <p>12 personal experience is four to five hours.</p> <p>13 Q. Are you aware that upon presentation to the Emergency</p> <p>14 Department Mr. Dunigan had a history of chest pain for</p> <p>15 eight hours?</p> <p>16 A. He may have had 25 hours, but he may not have had a</p> <p>17 myocardial infarct at the instant of the pain</p> <p>18 starting. Lots of people have bad coronary arteries</p> <p>19 and never develop a myocardial infarct. But the</p> <p>20 coronary arteries supply the heart muscle with blood,</p> <p>21 cause the arrhythmia and death.</p> <p>22 Q. And Mr. Dunigan was at risk for an arrhythmia and a</p> <p>23 sudden cardiac death at any time, including even the</p> <p>24 day before he was seen in the Emergency Department,</p> <p>25 true?</p>

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<p style="text-align: right;">Page 77</p> <p>1 A. Mr. Dunigan was at risk for myocardial infarct for</p> <p>2 years to have the changes that he had with scars and</p> <p>3 fibrosis in the heart muscle, but he didn't die until</p> <p>4 he came to the emergency room on the 6th -- on May</p> <p>5 6th, 2016.</p> <p>6 Q. By the way, are you critical in any way of the manner</p> <p>7 of performance or the conclusions reached in the</p> <p>8 autopsy report of Dr. Douglas?</p> <p>9 A. No. I never gave that a thought. It's an autopsy</p> <p>10 report. I don't take this with a grain of salt. I do</p> <p>11 take with a grain of salt what she puts in the death</p> <p>12 certificate, but that is not the autopsy report. You</p> <p>13 didn't ask that.</p> <p>14 Q. But I am now asking about your opinion of the autopsy</p> <p>15 report, which I believe is the only thing you have</p> <p>16 expert qualifications to comment on.</p> <p>17 MR. DAWSON: Well, let me object to your</p> <p>18 commentary. Why don't you just ask a question?</p> <p>19 A. I take exception to that comment of yours because I</p> <p>20 wrote about, what, 60,000, maybe 70,000 death</p> <p>21 certificates myself. Do you think I can do that?</p> <p>22 BY MR. O'LOUGHLIN:</p> <p>23 Q. My question is as to the autopsy report in this case.</p> <p>24 Do you have any criticisms of the manner in which the</p> <p>25 autopsy was performed or its conclusion?</p>	<p style="text-align: right;">Page 79</p> <p>1 where she says cocaine or even BE in that list of the</p> <p>2 illegal drugs.</p> <p>3 Q. First of all, are you aware that Mr. Dunigan gave a</p> <p>4 history of using marijuana and cocaine 14 times a</p> <p>5 week?</p> <p>6 A. I'm aware of that, sir, but I'm talking about the</p> <p>7 death certificate. That is another question that you</p> <p>8 asked me now. My answer to that is that is not what I</p> <p>9 referred to originally. I am unaware of there being</p> <p>10 any illegal drug in his system in that list of drugs</p> <p>11 on the death certificate.</p> <p>12 Q. To your knowledge, did Mr. Dunigan have any</p> <p>13 prescription for opiates?</p> <p>14 A. I don't know if he did or not, but my not knowing is</p> <p>15 that Hydrocodone is a prescription medication. But</p> <p>16 it's not illegal. It must not be illegal.</p> <p>17 Q. Do you know whether Mr. Dunigan had a prescription for</p> <p>18 any medication that would leave cocaine metabolites in</p> <p>19 his system?</p> <p>20 A. I don't know. He probably did not, but I don't know</p> <p>21 if he did or not. He may have had cocaine. Maybe</p> <p>22 somebody slipped it to him. But BE is a metabolite,</p> <p>23 not a drug. It's a metabolite of cocaine.</p> <p>24 Q. Do you know whether Mr. Dunigan had a prescription for</p> <p>25 Fentanyl?</p>
<p style="text-align: right;">Page 78</p> <p>1 A. I don't really take any exception with the -- I don't</p> <p>2 have any quarrel with the autopsy report.</p> <p>3 Q. What is your quarrel with what is on the death</p> <p>4 certificate?</p> <p>5 A. On the death certificate she puts that two minutes of</p> <p>6 interval between the onset and the manifestations,</p> <p>7 that is one thing, for each and every diagnosis. Then</p> <p>8 she puts there is illegal drugs in the blood of</p> <p>9 Mr. Dunigan, and that is really unsupportable because</p> <p>10 there is no illegal drugs. Which drugs are those?</p> <p>11 Q. I'm not sure I understand your opinion. Are you</p> <p>12 claiming that Mr. Dunigan did not have illegal drugs</p> <p>13 in his system?</p> <p>14 A. I'm not aware of. Which are the illegal drugs?</p> <p>15 Q. Did he have metabolites of cocaine?</p> <p>16 A. That is not a drug now. That is a metabolite. You</p> <p>17 don't go to the pharmacy and ask for BE or</p> <p>18 benzoyllecgonine. I wonder what they are going to give</p> <p>19 you.</p> <p>20 Q. You don't dispute that Mr. Dunigan was a drug abuser,</p> <p>21 do you?</p> <p>22 A. I don't go into all that research, sir. I'm saying</p> <p>23 there is no illegal drug in his system.</p> <p>24 Q. I'm sorry, Doctor. First of all --</p> <p>25 A. Among the illegal drugs she does not -- I don't see</p>	<p style="text-align: right;">Page 80</p> <p>1 A. I don't know, but it's a prescription medication.</p> <p>2 Q. But if he took it and he didn't have a prescription</p> <p>3 for it, that would be illegal, true?</p> <p>4 A. You know, I don't know where he got it, so am I going</p> <p>5 to make him an addict of Fentanyl just because he</p> <p>6 could have taken it without a prescription?</p> <p>7 Q. Why do you have qualms with the fact that the death</p> <p>8 certificate says that he has illegal drugs in his</p> <p>9 system?</p> <p>10 A. Because they are legal.</p> <p>11 Q. Any other disagreements with the death certificate or</p> <p>12 the autopsy report?</p> <p>13 A. No. Maybe I should read the death certificate a few</p> <p>14 more times. I don't know. I don't think so.</p> <p>15 May I ask you how much longer you are going</p> <p>16 to be?</p> <p>17 Q. I think I will pass the witness. If you want to take</p> <p>18 a break, we can do that.</p> <p>19 A. No. I would like to finish the deposition. That is</p> <p>20 important to me, but that is up to you to tell me that</p> <p>21 you are done. If you say you pass the witness, that</p> <p>22 tells me that you are finished.</p> <p>23 MR. DAWSON: There is another lawyer,</p> <p>24 Doctor.</p> <p>25</p>

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<p style="text-align: right;">Page 81</p> <p>1 BY MR. O'LOUGHLIN:</p> <p>2 Q. That means the other attorney here gets to ask you</p> <p>3 some questions.</p> <p>4 A. Okay.</p> <p style="text-align: center;">EXAMINATION</p> <p>6 BY MR. VANDERLAAN:</p> <p>7 Q. Dr. Spitz, my name is Allan VanderLaan. I simply want</p> <p>8 to concentrate on one aspect of your report. You</p> <p>9 indicate in the third paragraph, the second page -- I</p> <p>10 don't think you have your report with you. Let me</p> <p>11 read it. "There can be no greater pain than the fear</p> <p>12 of imminent death."</p> <p>13 Would you agree with me that that is a</p> <p>14 personal opinion as opposed to an expert one?</p> <p>15 A. No, I don't agree with you.</p> <p>16 Q. Would you agree with me that reasonable experts could</p> <p>17 disagree on that statement?</p> <p>18 A. I don't know what reasonable experts do, but I can</p> <p>19 tell you that you only die one time. If you don't --</p> <p>20 Q. Doctor, Doctor, stop. We want to get out of here.</p> <p>21 Just stop. Would you agree with me that there are a</p> <p>22 number of psychologists or psychiatrists or religious</p> <p>23 scholars that would disagree with that statement, that</p> <p>24 there can be no greater pain than the fear of imminent</p> <p>25 death?</p>	<p style="text-align: right;">Page 83</p> <p>1 time all day, but I disagree with that --</p> <p>2 Q. Tell me again --</p> <p>3 A. -- because I cherish life. I love life. I would like</p> <p>4 to be in a position where, because of all the people</p> <p>5 that I have followed to the good Lord, I would like to</p> <p>6 be allowed to be put in for an extension when my time</p> <p>7 comes. Having said that, thank you very much.</p> <p>8 Q. I respect your opinion, Doctor. But tell me, based</p> <p>9 upon your expertise, what allows you to make that</p> <p>10 particular statement, that there is no -- there can be</p> <p>11 no greater pain than the fear of imminent death?</p> <p>12 A. Because of my profession, because of my religion,</p> <p>13 because of my being the happiest person in the world</p> <p>14 when I wake up in the morning and I see the sunrise,</p> <p>15 especially yesterday because it was a magnificent view</p> <p>16 out of my bedroom window over the lake. I'm telling</p> <p>17 you it was a sight to behold.</p> <p>18 As long as I am around -- I'm 91 years old.</p> <p>19 I enjoy every minute. So is it just as good to die?</p> <p>20 No, sir, it is not.</p> <p>21 Q. Doctor, how would that -- how would that disagree with</p> <p>22 my reasonable position that, based upon my profession,</p> <p>23 my religion, my getting up in the morning and looking</p> <p>24 at a beautiful sunrise and saying to the good Lord I</p> <p>25 don't fear death? Why wouldn't that be reasonable?</p>
<p style="text-align: right;">Page 82</p> <p>1 A. I don't know what these people believe. I have no</p> <p>2 idea. So I can tell you that this guy here that is</p> <p>3 sitting and giving this deposition does not agree with</p> <p>4 those people who think that dying is a pleasure.</p> <p>5 Q. Doctor, if this fellow here speaking were to tell you</p> <p>6 that based upon his religious faith, that he would</p> <p>7 absolutely disagree that there is no greater pain than</p> <p>8 the fear of imminent death because his faith system</p> <p>9 allows him to believe that there is something beyond</p> <p>10 that, so he has no fear, which I don't, of imminent</p> <p>11 death, would you view that as an unreasonable</p> <p>12 position?</p> <p>13 A. Yes. I disagree with you. I disagree with you, and I</p> <p>14 think you are arguing with me, but that is up to you.</p> <p>15 Q. I'm not arguing with you. If I were to tell you,</p> <p>16 Doctor, I have no fear of imminent death, only because</p> <p>17 of the religious faith that I have, would you tell me</p> <p>18 that I was absolutely wrong and that I do have a fear</p> <p>19 of death?</p> <p>20 A. No, I'm not going to argue that. I'm not going to</p> <p>21 answer that. We live in a free country. You can</p> <p>22 think what you want, and I think what I want.</p> <p>23 Q. In which case would you agree with me that my position</p> <p>24 would be just as reasonable as yours?</p> <p>25 A. I don't argue that. You can have your opinions any</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Well, because the opposite is much, much better.</p> <p>2 Q. That would be an opinion of yours, correct?</p> <p>3 A. That is why I wrote that in the opinion. I wrote it</p> <p>4 in other opinions too because that is my conviction.</p> <p>5 Q. That is your conviction based upon your personal</p> <p>6 belief system?</p> <p>7 A. That is my personal belief and my professional belief</p> <p>8 too because there really is no difference between my</p> <p>9 professional belief and my personal belief. I believe</p> <p>10 what I practice.</p> <p>11 Q. As do I, Doctor. We can both be reasonable people and</p> <p>12 happen to disagree on that point?</p> <p>13 A. Okay.</p> <p>14 Q. You are not saying physical pain, correct? You are</p> <p>15 talking about emotional?</p> <p>16 A. I'm talking about all pain, all pain.</p> <p>17 Q. That statement --</p> <p>18 A. All pain.</p> <p>19 Q. Doctor, thank you. I wish you well.</p> <p>20 A. Thank you.</p> <p>21 Q. It's been an honor to ask you questions, sir. I'm</p> <p>22 done.</p> <p>23 MR. O'LOUGHLIN: I'm going to have a couple</p> <p>24 more, Don. Do you have any?</p> <p>25 MR. DAWSON: I have a couple. I will be</p>

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<p style="text-align: right;">Page 85</p> <p>1 very brief.</p> <p>2 EXAMINATION</p> <p>3 BY MR. DAWSON:</p> <p>4 Q. Doctor, during the multiple years that you have been a</p> <p>5 physician have you talked to other colleagues who have</p> <p>6 actually been at the bedside with patients who have</p> <p>7 died and learned of the fear of death that patients</p> <p>8 have expressed?</p> <p>9 A. Have I talked to other colleagues --</p> <p>10 Q. Yes, sir.</p> <p>11 A. Who did what?</p> <p>12 Q. Were at the bedside of people who were dying and saw</p> <p>13 their pain.</p> <p>14 A. Oh, absolutely. I have talked to lots of people like</p> <p>15 that. I have talked to lots of people who have tried</p> <p>16 to commit suicide and were unsuccessful and are</p> <p>17 delighted to have not succeeded.</p> <p>18 Q. And talked about their fear of death?</p> <p>19 A. Talked about their fear of death.</p> <p>20 Q. Are those all bases for your statement that people do</p> <p>21 have a great fear of imminent death?</p> <p>22 A. There are people who are petrified at the thought of</p> <p>23 dying.</p> <p>24 Q. That's all I have, Doctor?</p> <p>25</p>	<p style="text-align: right;">Page 87</p> <p>1 didn't want to catch the bus. The police came and</p> <p>2 took him, and then he was pronounced dead at 7:40.</p> <p>3 I'm not sure if that is exactly an hour and three</p> <p>4 quarters, but somewhere around there.</p> <p>5 Q. And again, I'm having trouble. I'm having trouble</p> <p>6 figuring out what period of time you are talking</p> <p>7 about. Are you talking about the time after he was</p> <p>8 outside the waiting room?</p> <p>9 A. He was out in the street from -- let me see. I think</p> <p>10 somewhere around 6:15 or something like that. I don't</p> <p>11 know the exact time because there are different times</p> <p>12 mentioned, but --</p> <p>13 Q. Let's talk about what you saw that indicated to you</p> <p>14 that Mr. Dunigan was starting to have this utmost pain</p> <p>15 and the fear of imminent death.</p> <p>16 A. He was in a state of building up large quantities of</p> <p>17 edema in the lungs. His lungs weighed like close to</p> <p>18 2,000 ml. I think the combined weight of both lungs</p> <p>19 was 19 -- around 1,900 grams. That is approximately</p> <p>20 900 or 950 grams per lung. That is approximately</p> <p>21 three times normal of what these lungs weighed. It</p> <p>22 takes time for that to occur. Now he has to breathe</p> <p>23 and breathe hard to mix that fluid with air. That is</p> <p>24 what causes foam. That is like drowning in your own</p> <p>25 fluids. That is asphyxiation like drowning without</p>
<p style="text-align: right;">Page 86</p> <p>1 RE-EXAMINATION</p> <p>2 BY MR. O'LOUGHLIN:</p> <p>3 Q. Doctor, just a couple more. In that paragraph</p> <p>4 Mr. VanderLaan was referring you to also, after you</p> <p>5 talk about the fear of doom and the utmost pain and</p> <p>6 there can be no greater pain than the fear of imminent</p> <p>7 death, you state in your report, "James Dunigan</p> <p>8 experienced this type of conscious pain and suffering</p> <p>9 for a duration of at least one and three quarters</p> <p>10 hours."</p> <p>11 What one and three quarter hour period of</p> <p>12 time were you referring to?</p> <p>13 A. Well, I believe that is the time that he spent in the</p> <p>14 waiting room. You know, I don't remember what I</p> <p>15 thought, but you see, he left the waiting room -- he</p> <p>16 went into the waiting room at 4:30. He left the</p> <p>17 waiting room after 6, like around 6:30 actually. He</p> <p>18 was pronounced dead at 7:40. Somewhere in that period</p> <p>19 is an hour and a quarter.</p> <p>20 Q. Okay. It's an hour and three quarters is what you put</p> <p>21 in your report.</p> <p>22 A. Maybe it is then an hour and three quarters. I don't</p> <p>23 really remember that. But the period was figured on</p> <p>24 from the time that he went out on the street where he</p> <p>25 was supposed to go to catch the bus, but he really</p>	<p style="text-align: right;">Page 88</p> <p>1 being even close to the water. That is a most painful</p> <p>2 type of death.</p> <p>3 Q. Okay. I think the only part of that answer that was</p> <p>4 responsive to my question was the "that takes time"</p> <p>5 part in terms of the fluid in the lungs. How much</p> <p>6 time does that take?</p> <p>7 A. Well, it takes quite a while. I cannot tell you</p> <p>8 exactly how long because I don't know when it started</p> <p>9 here. But to have the lungs weigh three times normal</p> <p>10 takes time to develop. I mean it goes without saying.</p> <p>11 I cannot tell you how long. It doesn't take a minute,</p> <p>12 and it doesn't take 15 minutes either.</p> <p>13 Q. Is there a range?</p> <p>14 A. I don't know that range, but I can only tell you that</p> <p>15 three times normal lungs do not -- is not an</p> <p>16 instantaneous condition.</p> <p>17 Q. That is what I'm asking.</p> <p>18 A. The lungs could have only weighed two times normal or</p> <p>19 maybe only somewhat wet lungs, but in this case they</p> <p>20 weighed three times normal. That is a lot of weight.</p> <p>21 That is -- well, to give you a better example, that</p> <p>22 would be -- let me just think a minute. Give me a --</p> <p>23 be patient with me. A half gallon, that would be like</p> <p>24 a gallon of -- that would be half -- that would be a</p> <p>25 gallon of fluid that the lungs had because the lungs</p>

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<p style="text-align: right;">Page 89</p> <p>1 normally weigh about 350 grams, 350 to 400, somewhere</p> <p>2 in that range.</p> <p>3 When you start having lungs that weigh</p> <p>4 close to 2,000, that is a lot of weight, a lot of</p> <p>5 fluid. With that is the hard work breathing, not</p> <p>6 getting enough oxygen and developing the anxiety that</p> <p>7 goes with inability to oxygenate. That is what he</p> <p>8 had. That is called dyspnea. That is called air</p> <p>9 hunger. That is called all kinds of names.</p> <p>10 Q. Thank you. Now, my questioning started because you</p> <p>11 put in your report one and three quarters hours. In</p> <p>12 answer to my questions about that you said you weren't</p> <p>13 sure what period of time you were referring to.</p> <p>14 My next question was what was going on with</p> <p>15 Mr. Dunigan that allowed you to say that he was</p> <p>16 experiencing that utmost pain, that fear of imminent</p> <p>17 death, and I believe you then referred to how heavy</p> <p>18 his lungs were, but you couldn't tell me how long that</p> <p>19 would take. Is that kind of a synopsis?</p> <p>20 MR. DAWSON: Let me object to the form of</p> <p>21 that question. First of all, he told you that the one</p> <p>22 and three quarter hour time was from the time he was</p> <p>23 in the waiting room until the time he went out to the</p> <p>24 squad car, so your statement is wrong. That is my</p> <p>25 objection.</p>	<p style="text-align: right;">Page 91</p> <p>1 underestimated. I don't know that. I can tell you</p> <p>2 this: To get lungs to weigh close to 2,000 ml takes</p> <p>3 time. It is a lot of painful --</p> <p>4 Q. That is what I'm trying to get at, Doctor. How much</p> <p>5 time does it take?</p> <p>6 A. I have told you. It takes a lot of time. How much is</p> <p>7 a lot? An hour and three quarters would qualify.</p> <p>8 Q. Did it take an hour and three quarters for Mr. Dunigan</p> <p>9 to get to the point where he had what you claim was</p> <p>10 this fluid accumulating in the lungs that caused the</p> <p>11 air hunger, difficulty breathing and dyspnea and fear</p> <p>12 of doom?</p> <p>13 A. Yes, that is exactly what I'm saying, that the buildup</p> <p>14 of fluids in the lung -- imagine that each and every</p> <p>15 air sac in the lung --</p> <p>16 Q. Unless you are going to say something that tells me</p> <p>17 how long it takes, I really don't want to hear it.</p> <p>18 A. Well, I told you how long it takes. It takes an hour</p> <p>19 and three quarters.</p> <p>20 Q. That is your claim?</p> <p>21 A. That is my claim.</p> <p>22 Q. And that is based on what in relation to this case?</p> <p>23 A. Well, when you have done 60,000 autopsies, either done</p> <p>24 myself or supervised, and you talk to relatives and</p> <p>25 when did your uncle start snoring and when did this</p>
<p style="text-align: right;">Page 90</p> <p>1 MR. O'LOUGHLIN: He changed that.</p> <p>2 BY MR. O'LOUGHLIN:</p> <p>3 Q. Is that your testimony, Doctor, and your belief, that</p> <p>4 Mr. Dunigan had this utmost pain and the fear of</p> <p>5 imminent death from the time he was wheeled into the</p> <p>6 waiting room until the time he went in the police car?</p> <p>7 A. Well, he was in the waiting room from 4:30 until 6:30.</p> <p>8 That means he was in the waiting room -- just taking</p> <p>9 those numbers he was in the waiting room two hours.</p> <p>10 He didn't get a ride from the police car. The police</p> <p>11 car wasn't even there when he went outside. It took</p> <p>12 time for them to come. Then it took time for them to</p> <p>13 load him. Then it took time for them to drive to the</p> <p>14 jail.</p> <p>15 He was dead when they came to the jail, but</p> <p>16 he died in the car. I don't know exactly the moment</p> <p>17 that he really died. He was pronounced dead at 7:40.</p> <p>18 According to the laws of this country everywhere you</p> <p>19 go all the medical examiners will tell you that a</p> <p>20 person is dead when he is pronounced dead. He could</p> <p>21 have died three months earlier.</p> <p>22 So consequently the period of time that I</p> <p>23 thought was appropriate was an hour and three</p> <p>24 quarters. Maybe I'm wrong. Maybe I have exaggerated</p> <p>25 by 15 minutes, maybe I have not. Maybe I have</p>	<p style="text-align: right;">Page 92</p> <p>1 develop and when did that develop, then you develop a</p> <p>2 scale in your mind.</p> <p>3 Then you can even write a paper about it.</p> <p>4 I never had the time to do that, therefore, I didn't</p> <p>5 write a paper, but could I? Yes, I could write a</p> <p>6 paper about things like that. I'm telling you with</p> <p>7 total reliability that an hour and three quarters</p> <p>8 would qualify.</p> <p>9 Q. Okay. Is that a possibility in this case?</p> <p>10 A. That is a possibility, yes. That is a possibility. I</p> <p>11 don't know -- I have told you I don't know exactly</p> <p>12 whether it's an hour and three quarters or an hour and</p> <p>13 40 minutes or maybe even an hour and-a-half. I don't</p> <p>14 know that for sure. But is it within the realm of</p> <p>15 likelihood? Absolutely.</p> <p>16 Q. Would you expect that at the point where Mr. Dunigan</p> <p>17 has this fear of doom, that he would at that point</p> <p>18 have difficulty breathing, air hunger and dyspnea?</p> <p>19 A. He would have the same as anybody who is submerged in</p> <p>20 water with nowhere to go. He is fearful of dying but</p> <p>21 nowhere to go to escape. That is all conducive to</p> <p>22 this fear of dying, that there is no -- nothing for</p> <p>23 him that he could do to escape that fate.</p> <p>24 Q. Okay. Can you point to any evidence that Mr. Dunigan</p> <p>25 was experiencing air hunger, difficulty breathing or</p>

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<p style="text-align: right;">Page 93</p> <p>1 dyspnea up to the point he was placed in the police 2 car?</p> <p>3 A. I don't really know that at that point it was to the 4 point of being certain that he would die at the end of 5 it, but it was more likely than not that that exactly 6 happened, that he was building up fluids as the 7 minutes went by. As I said before, you don't build up 8 this fluid in the lungs in just a few minutes.</p> <p>9 So therefore, how many minutes is it? I 10 can only say an hour and three quarters would be 11 within the realm. Is it a little bit less, a little 12 bit more? I do not know. So that is my answer. So 13 you can take it or leave it.</p> <p>14 Q. What is the shortest period of time in which a patient 15 with a prolonged resuscitation effort can build up 16 that degree of wet lung?</p> <p>17 A. There can be no doubt -- not wet, but drowning lungs. 18 The shortest time begins only when we know and hear 19 that he is starting to snore. But it isn't snoring. 20 To say snoring means -- to the average person means he 21 was sleeping and snoring. Lots of people snore when 22 they sleep. He wasn't sleeping. He was wide awake, 23 afraid to die. That is what he was.</p> <p>24 So to do with the sound that I heard on 25 the -- coming from the automobile where he was trying</p>	<p style="text-align: right;">Page 95</p> <p>1 which I figured out is most likely, that is the most 2 likely time.</p> <p>3 If you want me to cut it down, I can do a 4 deal with you. I think that is a joke. To tell you 5 that it is an hour and-a-half, but then I have to add 6 a quarter of an hour to the end, which means between 7 an hour and-a-half and two hours.</p> <p>8 Q. Okay. I honestly don't think I got an answer to this 9 question. Are you aware of any evidence that 10 Mr. Dunigan experienced air hunger, difficulty 11 breathing or dyspnea at any time before he was placed 12 in the back of the police car?</p> <p>13 A. Absolutely. The knowledge is that the amount of fluid 14 that he eventually had had to have been a long one 15 because of the amount of weight of the lungs. That is 16 measured to the gram because she put the -- 17 Dr. Douglas put the lungs on a scale and measured the 18 weight of each lung separately. One was 800 some 19 grams, and the other one was whatever it was. I don't 20 recall. Close to the -- the total weight was over -- 21 close to 2,000, like 1,900 grams for both lungs.</p> <p>22 Q. Any evidence other than the weight of the lungs at 23 autopsy that allowed you to say that Mr. Dunigan was 24 experiencing any air hunger, difficulty breathing, 25 dyspnea or fear of doom before he was placed in the</p>
<p style="text-align: right;">Page 94</p> <p>1 to find peace by lying down and wasn't let to lie down 2 and had to sit up because they wanted him to sit up 3 because it is a matter of police procedure that I have 4 acquainted myself so many times where I show you who 5 the boss is here. That is what that is.</p> <p>6 So how long? I don't know. An hour and 7 three quarters in this case.</p> <p>8 Q. What is the shortest period of time in which 9 Mr. Dunigan could have developed the lungs that were 10 identified at autopsy?</p> <p>11 A. If I give you the shortest way, I would also have to 12 add that same amount to the longest way. That is not 13 the longest way. The longest way is two hours. The 14 shortest way is quarter of an hour less.</p> <p>15 Q. Is what?</p> <p>16 A. A quarter of an hour less. That means an hour 17 and-a-half to two hours.</p> <p>18 Q. That is your claim?</p> <p>19 A. That is my claim.</p> <p>20 Q. All right. Is that based on anything?</p> <p>21 A. Yes, on my experience. That is because I say so. 22 That is not a very welcome statement to make to a 23 lawyer, but in this case I cannot -- you want me to be 24 a wizard. I cannot put my finger on the exact minute, 25 but I can tell you that an hour and three quarters,</p>	<p style="text-align: right;">Page 96</p> <p>1 back of the police car?</p> <p>2 A. Yes. All these things together, each one of those 3 words and nouns and adjectives and whatever you said 4 just now is in keeping with that opinion for the 5 simple reason that the weight of the lungs like in 6 this case is almost in the maximum. You don't often 7 have this kind of weight. The only equivalent to that 8 is in drowning cases. Now, imagine that --</p> <p>9 Q. Thank you, Doctor. Please listen to my question. 10 Other than the weight of the lungs can you point to 11 any evidence indicating that Mr. Dunigan was 12 experiencing air hunger, dyspnea, difficulty breathing 13 or fear of imminent death before the time he was 14 placed in the police car?</p> <p>15 A. Yes, because he was in need of air, but he had fluid 16 in the lungs. He was in need of air. That is why he 17 was in a state of air hunger. That is why he was 18 trying to breathe and couldn't. That is why he was in 19 a state of fear of death and all these other words 20 that you mentioned. That is why.</p> <p>21 Q. Again, did you see on video or read in any testimony 22 or any other information you have regarding this case 23 any evidence that he was short of breath, having 24 difficulty breathing, had dyspnea, had air hunger or 25 fear of imminent death at any time before he was</p>

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<p style="text-align: right;">Page 97</p> <p>1 placed in the police car other than the weight of the 2 lungs?</p> <p>3 A. I cannot tell you that. The lungs only weigh that 4 much because of the fluid in it. You want me to 5 ignore that. I cannot do that. The man tells me by 6 his breathing that he is in a state of fear of death 7 because he cannot breathe. That is indicated by the 8 foam and by the weight of the lungs and by the amount 9 of fluid in them.</p> <p>10 Then I can tell you this: That when you 11 weigh those lungs, once you take them out of the body, 12 you lose a significant amount of fluid because when 13 you cut the lungs as you do in an autopsy, you take 14 them out of the body, so you cut parts that would lose 15 some fluid. So it's even more than 1,900.</p> <p>16 So don't make me say things that I don't 17 want to say because I think that is nonsense what you 18 are asking me.</p> <p>19 Q. Did you see any evidence on the video -- did you hear 20 anything that indicated Mr. Dunigan had any difficulty 21 breathing at any time before he was placed in the 22 police car?</p> <p>23 A. Well, when the lungs contain a lot of fluid, you have 24 difficulty breathing. Take it from me. Take it from 25 those who survived a drowning. Take it from any one</p>	<p style="text-align: right;">Page 99</p> <p>1 as much as a drowning victim.</p> <p>2 Q. Would it be your opinion that that amount of fluid in 3 the lungs would be evident to anyone looking at 4 Mr. Dunigan and watching or listening to him breathe?</p> <p>5 A. I don't know what anybody would see or remember or try 6 to convince me that he was just on his way to a party 7 when he was put in the police car. No, he was not. 8 He was fighting for survival because he could not 9 breathe. If somebody tells me he was not making any 10 manifestations, let me tell you, they are lying.</p> <p>11 Q. All right. Let's go with that. By the way, have you 12 watched the video?</p> <p>13 A. Yes, I did.</p> <p>14 Q. All of them?</p> <p>15 A. Yes. Several. I think three or four.</p> <p>16 Q. Start to finish from the time Mr. Dunigan went into 17 the waiting room until the time he was wheeled out of 18 the waiting room? Did you watch that video?</p> <p>19 A. I watched several disks. I don't know if they were 20 three or four. I don't remember that because I didn't 21 put the videos into the computer. My office manager 22 did that. I watched them.</p> <p>23 Q. Do you know whether you watched the complete video of 24 the time period from where the surveillance in the 25 waiting room is shown on the video?</p>
<p style="text-align: right;">Page 98</p> <p>1 of those kind of people, including myself, and I will 2 tell you.</p> <p>3 You put the body in a swimming pool and put 4 the body on the bottom, they will tell you too. If 5 they ever get the chance of getting out of the pool, 6 they will tell you what went through their mind.</p> <p>7 Q. Did you see or hear anything on the video that 8 indicated to you that Mr. Dunigan had any difficulty 9 breathing, air hunger, dyspnea or fear of imminent 10 death before he was placed in the back of the police 11 car?</p> <p>12 MR. DAWSON: Objection, asked and answered. 13 Go ahead, Doctor.</p> <p>14 A. I don't know that I have. I don't know that I have 15 heard it before. I wasn't there on the premises. I 16 don't know that I even have pictures of him before he 17 was loaded up into the car, but I do know that he was 18 restless when he was in the car. Before that I 19 necessarily did not see him. I don't know what he did 20 before.</p> <p>21 BY MR. O'LOUGHLIN: 22 Q. Thank you.</p> <p>23 A. But I can visualize that with that amount of fluid he 24 had to have had not just 10 minutes or 15 minutes or 25 not even just an hour to develop enough fluid to have</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Yes. I watched in the waiting room. I watched the 2 videos outside on -- outside the door of the entrance 3 door to the Emergency Department. I watched -- well, 4 as I said, I watched all the videos that were sent 5 here.</p> <p>6 Q. That is my question. Did you watch them in realtime, 7 or did you fast forward?</p> <p>8 A. No, not fast forward. Realtime.</p> <p>9 Q. You watched the entire video, all three sets of 10 videos, from the surveillance in the waiting room, the 11 outside exterior camera at Bronson which shows him on 12 the sidewalk and the video from the back of the police 13 car?</p> <p>14 A. Yes, I did. It took a long time. I can tell you that 15 too.</p> <p>16 Q. We know exactly how long it took because all those 17 videos have times on them.</p> <p>18 A. Yes. I don't remember what time it took because I 19 didn't look. But it took a long time. I know that.</p> <p>20 Q. Great. At any time before Mr. Dunigan was placed in 21 the back of the police car are you aware of any 22 evidence indicating that he was foaming at the mouth?</p> <p>23 A. I don't know what he did at each time. I cannot tell 24 you. I can only tell you what he is likely to have 25 done because of the weight of the lungs, because of</p>

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<p style="text-align: right;">Page 101</p> <p>1 the amount of water in the lungs, because all that</p> <p>2 would have caused him to be short of breathing space</p> <p>3 because most of the lungs were occupied by edema, by</p> <p>4 fluid. So that causes someone to not be able to</p> <p>5 breathe and have air hunger.</p> <p>6 So if he is an exception, well, I don't</p> <p>7 know. There is no exceptions to air hunger. When you</p> <p>8 don't have ability to breathe, you develop air hunger,</p> <p>9 whether you like it or you don't.</p> <p>10 Q. You would expect that to be visible to someone who was</p> <p>11 looking at him?</p> <p>12 A. I don't know what somebody observes when he observes</p> <p>13 air hunger. Maybe he calls it something else. I</p> <p>14 don't know. I don't know that. But I do know what</p> <p>15 people who come out of water what they think about</p> <p>16 drowning, and that is drowning in your own fluids.</p> <p>17 Q. By the way, you would agree that he had no signs or</p> <p>18 symptoms of air hunger, dyspnea, difficulty breathing</p> <p>19 or wet lungs while he was being examined in the</p> <p>20 Emergency Department, true?</p> <p>21 A. I don't know what he exhibited there. There is no</p> <p>22 mention of him having snoring breath sounds when he</p> <p>23 was in the emergency room. There is no mention in</p> <p>24 this doctor's records that he heard or saw air hunger.</p> <p>25 I don't even know that he knows that term. I have no</p>	<p style="text-align: right;">Page 103</p> <p>1 conveniently, that he was given oxygen at the same</p> <p>2 time.</p> <p>3 Q. On room air. No.</p> <p>4 A. On room air. That is marked in the records that it's</p> <p>5 on room air, right?</p> <p>6 Q. Yes.</p> <p>7 A. Okay. Well, tell me another one. He was building up</p> <p>8 fluids.</p> <p>9 Q. You are saying that couldn't have been the case when</p> <p>10 he was in the Emergency Department being examined by</p> <p>11 Dr. Regot?</p> <p>12 A. Well, he was in the Emergency Department because of</p> <p>13 chest pain, and the chest pain was obviously not from</p> <p>14 falling off the bus or falling on the cement. So he</p> <p>15 had no injuries according to this doctor. So you</p> <p>16 can't have it both ways. Okay. Thank you very much.</p> <p>17 I think I'm going to leave now. You have kept me way</p> <p>18 beyond 5:00. I don't know what the time is. What is</p> <p>19 the time?</p> <p>20 COURT REPORTER: 5:52.</p> <p>21 A. 5:52. So it's an hour later. It's almost 6:00.</p> <p>22 BY MR. O'LOUGHLIN:</p> <p>23 Q. So you are terminating the deposition?</p> <p>24 A. Well, I'm not terminating anything, but I mean I have</p> <p>25 asked you to let me go out of here at 5:00, but you</p>
<p style="text-align: right;">Page 102</p> <p>1 idea. Maybe he calls it dyspnea. I have no idea. I</p> <p>2 don't know this doctor.</p> <p>3 Q. If Mr. Dunigan was in the condition you are describing</p> <p>4 in the Emergency Department, would you expect him to</p> <p>5 have a regular respiratory pattern?</p> <p>6 A. I don't know what a regular respiratory pattern is</p> <p>7 when somebody has edema in the lungs because he</p> <p>8 probably did have edema because those coronaries did</p> <p>9 not afford him good health. So was he -- did he have</p> <p>10 edema/fluid in the lungs? I'm sure he did. He was in</p> <p>11 congestive heart failure.</p> <p>12 Q. And you are saying that was the case when he was in</p> <p>13 the Emergency Department being examined by Dr. Regot?</p> <p>14 A. Exactly.</p> <p>15 Q. All right. Let's stick with that. That is what you</p> <p>16 just said, true?</p> <p>17 A. Yes. Exactly. Yes, and I sign it.</p> <p>18 Q. All right. Listen to me, please. Would you expect</p> <p>19 someone who was -- who had edema of the lungs and</p> <p>20 congestive heart failure on clinical examination to</p> <p>21 have no respiratory distress, normal breaths sounds,</p> <p>22 no rales, no wheezing, clear lungs on auscultation</p> <p>23 bilaterally, a regular respiratory pattern and a 98</p> <p>24 percent oxygen saturation?</p> <p>25 A. On oxygen, right? Now, that you didn't tell me</p>	<p style="text-align: right;">Page 104</p> <p>1 didn't. So now you can keep me until midnight.</p> <p>2 Q. I asked you if you wanted a break. You said you</p> <p>3 wanted to go ahead and finish, which I am very close</p> <p>4 to doing if I can get an answer to my question.</p> <p>5 A. Okay.</p> <p>6 Q. Would a patient with pulmonary edema to the extent</p> <p>7 that the patient is experiencing the fear of doom be</p> <p>8 expected to have clear lungs to auscultation</p> <p>9 bilaterally, no respiratory distress, normal breath</p> <p>10 sounds, no rales, no wheezing, a regular breathing</p> <p>11 pattern and a 98 percent oxygen saturation on room</p> <p>12 air?</p> <p>13 A. I'm inclined to believe, since I cannot believe that</p> <p>14 the doctor over there in the emergency room did not</p> <p>15 hear him snore. So I believe that he probably did not</p> <p>16 snore at that time, but he did snore later on, and it</p> <p>17 got worse and not better because he didn't do anything</p> <p>18 to make this patient get better. He just gave him an</p> <p>19 x-ray. The x-ray didn't touch him as far as improving</p> <p>20 his condition. The x-ray didn't do anything.</p> <p>21 Q. Are you able to --</p> <p>22 A. I'm sorry?</p> <p>23 Q. Are you able to answer my question?</p> <p>24 A. Yes. I am answering your question. You just don't</p> <p>25 like the answer.</p>

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<p style="text-align: right;">Page 105</p> <p>1 Q. Was your answer that you didn't believe those findings 2 were correct?</p> <p>3 A. No, I didn't say that. I said he probably was not 4 snoring at the time, but the snoring developed while 5 he was in with him from 2:13 until 4:30. Then at 4:30 6 he was in the waiting room. So for another two hours 7 or hour and-a-half. So did he have all of these 8 manifestations at that time? Maybe not. Maybe he had 9 a few other manifestations, but that he was without 10 any edema and he was perfectly fine and he was on his 11 way to the dancing club, no, that he wasn't. He 12 wasn't on his way to the dancing club.</p> <p>13 He was in dire condition. He had two 14 coronary arteries that were almost obstructed. Almost 15 obstructed, well, they were one percent short of being 16 almost obstructed. So you are telling me that this 17 didn't manifest itself in any way? Well, you must 18 think that I was born yesterday.</p> <p>19 Q. Would the findings described be completely 20 inconsistent with a patient who has pulmonary edema to 21 the extent that they are suffering the fear of 22 imminent death?</p> <p>23 A. I didn't say that he had fear of imminent death in the 24 first two hours in the emergency room. I didn't say 25 that.</p>	<p style="text-align: right;">Page 107</p> <p>1 Q. Does that mean you can say that it was occurring while 2 he was in the Emergency Department?</p> <p>3 A. Yes.</p> <p>4 Q. Which was --</p> <p>5 A. I'm saying because the waiting room is the Emergency 6 Department also.</p> <p>7 Q. No. We have already distinguished that, but I will 8 try it again. Up to the time he went to the waiting 9 room after he was discharged from the Emergency 10 Department are you aware of any evidence indicating 11 that he had any respiratory difficulty or pulmonary 12 edema whatsoever?</p> <p>13 A. I have already answered this I don't know how many 14 times today. I will answer this one more time, sir. 15 Then after that I hope you will have the decency of 16 letting me out of here.</p> <p>17 Q. I think it can be answered yes or no.</p> <p>18 A. Then ask me again.</p> <p>19 Q. Are you aware from the time -- pardon me -- up to the 20 time -- before the time that Mr. Dunigan was 21 discharged from the Emergency Department to the 22 waiting room are you aware of any evidence indicating 23 that he had any respiratory difficulties whatsoever?</p> <p>24 A. No, I do not.</p> <p>25 Q. Thank you.</p>
<p style="text-align: right;">Page 106</p> <p>1 Q. That is what I'm trying to ask you, Doctor.</p> <p>2 A. I didn't say that. I said he was not breathing heavy. 3 I didn't say that he was -- that Dr. Regot heard him 4 snore but he didn't say it. I didn't say that. He 5 developed the pulmonary edema down the line, this 6 heavy pulmonary edema that caused him to be heard 7 around the block. That is the pulmonary edema he 8 ended up with.</p> <p>9 Q. Is there a single piece of evidence that you are aware 10 of that Mr. Dunigan exhibited any respiratory symptoms 11 that would indicate pulmonary edema or anything else 12 while he was in the Emergency Department before he 13 went to the waiting room?</p> <p>14 A. I don't know. There is no such thing mentioned, but 15 there is plenty mentioned later on because I heard it, 16 and that did not develop --</p> <p>17 Q. I don't care about later on, Doctor. Please listen to 18 my question.</p> <p>19 A. No, no, no, no, no. You are misleading, sir. By 20 doing that you are misleading me and the reader of 21 this deposition. You are misleading asking me like 22 that.</p> <p>23 I am saying that this snoring in the car 24 did not develop instantly, and I tell you that again 25 and again and again.</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Okay.</p> <p>2 Q. Do you know when Mr. Dunigan lost consciousness?</p> <p>3 A. I'm sorry?</p> <p>4 Q. Do you know when Mr. Dunigan lost consciousness?</p> <p>5 A. He lost consciousness in the automobile.</p> <p>6 Q. What --</p> <p>7 A. Yes, he lost consciousness in the automobile because 8 when -- yes. When he was not getting oxygen, he lost 9 consciousness.</p> <p>10 Q. Do you recall from the video and audio in the police 11 car that after the officers got into the car 12 Mr. Dunigan asked them if they could take the cuffs 13 off?</p> <p>14 A. Yes, I know that. He was conscious then.</p> <p>15 Q. Did he indicate that he was having any difficulty 16 breathing or respiratory difficulty at that time?</p> <p>17 A. No, he didn't, but he wanted the handcuffs off because 18 it's more comfortable than having your wrists tied 19 behind your back. He was not comfortable. The 20 decency of the police officer would have been to 21 comply with the request. It wouldn't have hurt them 22 to do that.</p> <p>23 Q. At that time, the time he asked to have the cuffs 24 taken off, did he indicate that he had the fear of 25 imminent death?</p>

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<p style="text-align: right;">Page 109</p> <p>1 A. No. Come on now. You know that he didn't do that.</p> <p>2 No, he didn't do that.</p> <p>3 Q. Okay. From that point how long was it before he lost</p> <p>4 consciousness?</p> <p>5 A. I don't know when he lost consciousness. He was found</p> <p>6 dead. They were most surprised. How did this faker</p> <p>7 die of fake?</p> <p>8 Q. Do you know how long --</p> <p>9 A. That was strange.</p> <p>10 Q. Do you know how long Mr. Dunigan was conscious in the</p> <p>11 back of the police car?</p> <p>12 A. I don't know. But when they put him in there, he was</p> <p>13 conscious. He was conscious when he asked for the</p> <p>14 cuffs to be removed. How long he was unconscious</p> <p>15 before he was pronounced dead I have no idea. Nobody</p> <p>16 knows when he died.</p> <p>17 Q. That was my question. That was my question, Doctor.</p> <p>18 Thank you. You don't know, right?</p> <p>19 A. I don't know because nobody knows when he actually</p> <p>20 died. We know that he was pronounced dead at 7:40,</p> <p>21 but when he actually died we do not know in the</p> <p>22 presence of those cuffs.</p> <p>23 Q. Okay. So you also don't know how long he experienced</p> <p>24 any conscious pain and suffering, true?</p> <p>25 A. I assume that he died shortly before they arrived at</p>	<p style="text-align: right;">Page 111</p> <p>1 because that breathing is ominous. And if you hear</p> <p>2 it, you know that somebody is breathing and probably</p> <p>3 conscious because that breathing is fighting for air.</p> <p>4 Q. What makes you say that that means they are probably</p> <p>5 conscious?</p> <p>6 A. Because he's fighting for air. He cannot go to sleep.</p> <p>7 Q. Were you involved at all in Dr. Kevorkian's case?</p> <p>8 A. Yes. I did autopsies on some of his victims.</p> <p>9 Q. Were you involved in any of the litigation?</p> <p>10 A. No, I was not.</p> <p>11 Q. Did any of Dr. Kevorkian's victims have that utmost</p> <p>12 worst pain, no greater fear than the fear of imminent</p> <p>13 death?</p> <p>14 A. You know, I don't remember that. That is too long</p> <p>15 ago. I don't remember.</p> <p>16 Q. All right, Doctor. I will tell you in advance that I</p> <p>17 will protest any bills for the time this deposition</p> <p>18 took beyond what was the \$2,500 that we paid you. I</p> <p>19 will take it to the Judge with this transcript to</p> <p>20 explain why it took so long.</p> <p>21 MR. VANDERLAAN: Doctor, this is Allan</p> <p>22 VanderLaan. I pray for your continued good health and</p> <p>23 that you see many more sunrises. Mr. Dawson, I didn't</p> <p>24 see you, but --</p> <p>25 MR. DAWSON: That's all right. I am here.</p>
<p style="text-align: right;">Page 110</p> <p>1 the police station, but I cannot be absolutely sure.</p> <p>2 It can be before, and it can be later. I do not know</p> <p>3 exactly. I do not know. I would have to speculate</p> <p>4 when he actually stopped breathing and had a</p> <p>5 heartbeat.</p> <p>6 Q. So you are --</p> <p>7 A. They certainly never made an effort in the police car</p> <p>8 to determine when he died, to be aware that he</p> <p>9 suddenly stopped breathing because God only knows when</p> <p>10 he breathed, he let them know that he is breathing by</p> <p>11 snoring loud and clear, and suddenly it stopped.</p> <p>12 Q. You are unable to offer an opinion as to how long</p> <p>13 Mr. Dunigan experienced conscious pain and suffering</p> <p>14 while in the back of the police car, true?</p> <p>15 A. He stopped breathing at some time in the police car.</p> <p>16 When the exact minute was that he stopped breathing I</p> <p>17 cannot tell you.</p> <p>18 Q. And stopping breathing -- one can be breathing and</p> <p>19 still not be conscious, true?</p> <p>20 A. Say that again.</p> <p>21 Q. One can be breathing but unconscious, true?</p> <p>22 A. Well, you can snore and be unconscious, so I guess you</p> <p>23 can breathe and be unconscious. But --</p> <p>24 Q. All right.</p> <p>25 A. But when you stop breathing, the neighborhood knows it</p>	<p style="text-align: right;">Page 112</p> <p>1 MR. VANDERLAAN: It's been a pleasure.</p> <p>2 Thank you.</p> <p>3 MR. DAWSON: Good seeing you all.</p> <p>4 (The deposition was concluded at 6:05 p.m.</p> <p>5 Signature of the witness was not requested by</p> <p>6 counsel for the respective parties hereto.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>1 CERTIFICATE OF NOTARY</p> <p>2 STATE OF MICHIGAN)</p> <p>3) SS</p> <p>4 COUNTY OF OAKLAND)</p> <p>5</p> <p>6 I, Linda S. Wilson, certify that this</p> <p>7 deposition was taken before me on the date</p> <p>8 hereinbefore set forth; that the foregoing questions</p> <p>9 and answers were recorded by me stenographically and</p> <p>10 reduced to computer transcription; that this is a</p> <p>11 true, full and correct transcript of my stenographic</p> <p>12 notes so taken; and that I am not related to, nor of</p> <p>13 counsel to, either party nor interested in the event</p> <p>14 of this cause.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 </p> <p>21</p> <p>22 LINDA S. WILSON, CSR-0973</p> <p>23 Notary Public,</p> <p>24 Oakland County, Michigan.</p> <p>25 My Commission expires: 2/24/19.</p>	